



***Park County Subdivision Regulations***

**June 1, 2010**

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## **DEFINITIONS**

Whenever the following words or phrases appear in these regulations, they shall have the meaning assigned to them by this section. When not inconsistent with the context, words used in the present tense include the future; the singular, unless otherwise specifically defined in a particular section, includes the plural, and the singular; the word “shall” is always mandatory, and the word “may” indicates use of discretion in making decisions.

1. **ACCESS (LEGAL AND PHYSICAL):**
  - a. **Legal Access** means that each Lot in a Subdivision either abuts a public (city, county, state, or federal) street or road, or that the Applicant(s) has obtained adequate and appropriate easements across all necessary properties, from a public road to each Lot in the Subdivision, whether or not a road has been constructed on that property, and has dedicated the easement or private road for public use.
  - b. **Physical Access** means that a street or road conforming to the Subdivision design standards provides vehicular access to each Lot in the Subdivision, either from a public street or road, from a road constructed to local road standards in the obtained easements for public use, or from a private road improved to local road standards which has been dedicated to public use.
2. **ADJOINING LANDOWNER (ADJACENT PROPERTY OWNER):** The owner of record of a parcel of land that is contiguous, at any point, or land that is separated from the parcel by a road, watercourse or deeded right-of-way.
3. **AGRICULTURE:** Activities related to the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery and horticultural crops that are raised, grown, or produced for commercial purposes on lands taxes as agricultural by the State of Montana.
4. **AGRICULTURAL WATER USER FACILITIES:** Any part of an irrigation system historically used to produce an Agricultural product on property used for Agricultural purposes as defined in Section 15-7-202, MCA.
5. **APPLICANT:** Any person, firm or corporation, or other entity which causes land to be subdivided or which proposes a Subdivision of land [Section 76-3-103 (15), MCA]. When used in these regulations, the term "Applicant(s)" may also include the property purchaser on a contract for deed or its authorized agent, or the landowner's authorized agent, if the landowner has provided the Subdivision Administrator written notification that the landowner's agent is authorized to act (notarized power of attorney) on the landowner's behalf and to receive notices regarding local government decisions concerning the Subdivision.
6. **BENCHMARK:** A reference point for making measurements.

7. **BLOCK:** A group of Lots, tracts or parcels within well-defined and fixed boundaries.
8. **BUILDING SETBACK LINE:** An imaginary line establishing the minimum distance that structures may be located from Lot lines and street right-of-ways.
9. **CASH DONATION/CASH-IN-LIEU OF PARKLAND:** When it has been determined by the Board of Commissioners that an Applicant may replace park land with money paid to the county for obtaining Park Land this shall be referenced as a “cash donation” or as “Cash in lieu of Park Land”. “Cash donation” is the fair market value of the unsubdivided, unimproved land; (MCA 76-3-621(9)(a).
10. **CERTIFICATE OF SURVEY:** A drawing of a field survey prepared by a Professional Land Surveyor for the purpose of disclosing facts pertaining to boundary locations.
11. **CLUSTER DEVELOPMENT:** A Subdivision with Lots clustered in a group of five or more Lots that is designed to concentrate building sites on smaller Lots while allowing other lands to remain undeveloped. [Section 76-3-103 (2), MCA].
12. **COMMERCIAL:** Use for any business, retail trade or service activity purposes.
13. **COMPREHENSIVE PLAN, MASTER PLAN, OR GROWTH POLICY:** means a Comprehensive Plan, Master Plan, or Comprehensive Plan that was adopted pursuant to Title 76, Chapter 1, MCA, before October 1, 1999, or a policy that was adopted pursuant to Title 76, Chapter 1, MCA, on or after October 1, 1999.
14. **CONDOMINIUM:** A form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project, with the land and other parts of the project held in common ownership or use with owners of the other units, pursuant to Title 70, Chapter 23, MCA.
15. **CONSTRUCTION:**
  - a. As it relates to roads, the cutting, moving and filling of earthen or other materials resulting in a travel-way for motorized and non-motorized vehicles or the site for a structure.
  - b. As the word “construction” relates to buildings, the common and customary meaning applies.
16. **COVENANT (RESTRICTIVE COVENANT):** A limitation contained in a deed or other document that restricts or regulates the use of the real property.
17. **DEDICATION:** The deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted. [Section 76-3-103(3), MCA].
18. **DEQ:** The Montana Department of Environmental Quality.



19. **DIVISION OF LAND:** The segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or Subdivision plat establishing the identity of the segregated parcels pursuant to the MSPA. The conveyance of a tract of record or an entire parcel of land that was created by a previous Division of Land is not a Division of Land. [Section 76-3-103 (4), MCA].
20. **DRIVEWAY:** A private road that services only one residence, which does not exceed 150 feet in length, and shall have a minimum width of 16 feet.
21. **DWELLING UNIT:** Any structure or portion thereof providing complete, independent and permanent living facilities for one household.
22. **EASEMENT:** Authorization by a property owner for another to use, or restriction on the right of the owner to use, all or a portion of the owner's property for a specified purpose.
23. **ENGINEER (PROFESSIONAL ENGINEER):** A person licensed in conformance with the Montana Engineers' and Land Surveyors' Act [Title 37, Chapter 67, MCA] to practice engineering in the State of Montana.
24. **ENVIRONMENTAL ASSESSMENT:** For a Major Subdivision, an Environmental Assessment is a document that includes (See, Section 76-3-603, MCA):
  - (a) a description of every body or stream of surface water that may be affected by the proposed Subdivision, together with available ground water information, and a detailed description of the topography, vegetation, and wildlife use within the area of the proposed Subdivision;
  - (b) a summary of the probable affects of the proposed Subdivision based on the criteria described in Section 76-3-608(3)(a), MCA (See section IV-A-8.B.4 of these regulations);
  - (c) a community affect report containing a statement of anticipated needs of the proposed Subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection; and
  - (d) additional relevant and reasonable information related to the applicable regulatory criteria adopted under Section 76-3-501, MCA, including, but not limited to;
    - i. the orderly development of their jurisdictional areas;
    - ii. the coordination of roads within subdivided land with other roads, both existing and planned;
    - iii. the dedication of land for roadways and for public utility easements;
    - iv. the improvement of roads;
    - v. the provision of adequate open spaces for travel, light, air, and recreation;
    - vi. the provision of adequate transportation, water, and drainage;

- vii. subject to the provisions of Section 76-3-511, MCA the regulation of sanitary facilities;
  - viii. The avoidance or minimization of congestion; and
  - ix. The avoidance of Subdivisions that would involve the welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of the services, as may be required by the Board of Commissioners.
25. **FIRST MINOR SUBDIVISION:** A Minor Subdivision from a Tract of Record that has not been subdivided or created by a Subdivision under the MSPA, or has not resulted from a tract of record that has had more than five parcels created from that tract of record under Section 76-3-201 or Section 76-3-207, MCA, since July 1, 1973. [Section 76-3-609(2), MCA].
  26. **FLOOD:** The water of any watercourse or drainage which is above the bank or outside the channel and banks of such watercourse or drainage [Section 76-5-103(8), MCA].
  27. **FLOOD HAZARD AREA:** The land subject to flooding from the base flood.
  28. **FLOOD OF 100 YEAR FREQUENCY:** A Flood magnitude which has a one percent chance of occurring in any given year , or is a Flood magnitude which is expected to recur on the average of once every 100 years [Section 76-5-103(9), MCA].
  29. **FLOODPLAIN:** The area adjoining the watercourse or drainage that would be covered by the floodwater of a Flood of 100 Year Frequency [Section 76-5-103(10), MCA].
  30. **FLOODWAY:** The channel of a watercourse or drainage and those portions of the Floodplain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainage [Section 76-5-103(11), MCA].
  31. **BOARD OF COMMISSIONERS:** Board governing authority of a county. For Park County the governing board is the Board of Commissioners.
  32. **GUEST HOUSE:** An accessory structure that is used for temporary and periodic quarters for guests. The structure is not used for a permanent residence and may not be leased or rented to the general public.
  33. **HILLTOP INTERSECTION:** Hilltop Intersections will be defined on a case by case base by the Board, using the following criteria:
    - c. Visibility
    - d. Gradient
    - e. Slope

f. Public Health and Safety

34. **IMMEDIATE FAMILY:** A spouse, child by blood or adoption, and parents.
35. **IMPROVEMENT AGREEMENT:** A contractual agreement that may be required by the Board of Commissioners to ensure the construction of such improvements as required by these regulations. The Improvement Agreement may require collateral to secure the construction of such improvements, such as the deposit of certified funds, irrevocable letters of credit, performance or property bonds, private or public escrow agreements, or similar financial guarantees.
36. **LANDOWNER:** All individuals, groups, or parties with a title interest in the property. For purposes of these regulations, when a parcel of land for which an exemption from Subdivision review is claimed is being conveyed under a contract-for-deed, the terms “property owner,” “landowner,” and “owner” mean the seller of the parcel under the contract-for-deed (24.183.1104 ARM). For all other purposes of these regulations, the terms “property owner,” “landowner,” and “owner” may mean both the seller and the purchaser under a contract for deed.- and can be used interchangeably.
37. **LOCAL FIRE AUTHORITY:** A local fire district, fire service area, the county fire marshal, or an independent contractor who performs fire review on contract with the County or a local fire district or fire service area.
38. **LOCAL SERVICES:** Any and all services or facilities local government is authorized to provide, such as water supply, sewage disposal, law enforcement, fire protection, emergency services, transportation system, educational system, noxious weed control, as well as services that local government does not provide such as power, telephone, state highways, etc.
39. **LOCATION MAP:** A small map showing the location of a tract of land in relation to a larger land area.
40. **LOT:** A parcel, plot, or other land area created by Subdivision for sale, rent, or lease.
41. **LOT MEASUREMENT:**
  - a. Lot Depth -- The length of a line drawn perpendicularly to the front Lot line and extending to the rear Lot line.
  - b. Lot Width -- The average width of the Lot.
  - c. Lot Frontage -- The width of the front Lot line.
  - d. Lot Area -- The area of a Lot determined exclusive of street, highway, alley, road, or other rights-of-way or access easements.

42. **LOT TYPES:**
- a. Corner Lot: A Lot located at the intersection of two streets.
  - b. Interior Lot: A Lot with frontage on only one street.
  - c. Through or Double-Frontage Lot: A Lot whose front and rear lines both abut on streets.
  - d. Flag Lot: A Lot of irregular shape, the bulk of which is normally situated to the rear of other Lots, having as its frontage and access a drive connecting it to a street.
43. **MAJOR SUBDIVISION**: A Subdivision that creates six or more Lots.
44. **MINOR SUBDIVISION**: A Subdivision that creates five or fewer Lots.
45. **MOBILE (MANUFACTURED) HOME**: A detached residential dwelling unit, which may consist of two or more sections, fabricated at a factory and designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation. The term includes, but is not limited to, “trailer homes,” “house trailers,” and “manufactured homes” whether or not the unit has been constructed after July 1, 1976, in conformance with Federal Manufactured Home Construction and Safety Standards. The term does not include “modular” or “factory-built buildings” that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site-built homes, and are transported to the site for final assembly on a permanent foundation.
46. **MOBILE (MANUFACTURED) HOME SPACE**: A designated portion of a parcel of land designed for the accommodation of one Mobile Home and its accessory buildings or structures for the exclusive use of the occupants.
47. **MOBILE (MANUFACTURED) HOME PARK**: A tract of land that provides or will provide spaces for two or more Mobile Homes.
48. **MOBILE (MANUFACTURED) HOME PAD**: That area of a Mobile Home space which has been prepared for the placement of a Mobile Home.
49. **MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY MINIMUM STANDARDS**: Minimum standards promulgated by the Montana Department of Environmental Quality, pursuant to Title 76, Chapter 4, Part 1, MCA.
50. **MONUMENT (PERMANENT MONUMENT)**: Any structure of masonry, metal, or other permanent, durable material placed in the ground, which is exclusively

- identifiable as a Monument to a survey point, expressly placed for surveying reference.
51. **MSPA:** Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA.
  52. **NATURAL ENVIRONMENT:** Existing physical conditions relating to land, water, air, plant and animal life of an area and the interrelationship of those elements, such as soils, geology, topography, vegetation, surface water and drainage, floodplains, and ground water and aquifers.
  53. **OPEN SPACE:** Land or water areas retained for use as active or passive recreation areas or for resource protection in an essentially undeveloped state.
  54. **ORIGINAL TRACT:** A tract of land created as of July 1, 1973.
  55. **OVERALL DEVELOPMENT PLAN:** The plan of a Subdivision design proposed to be subdivided in stages.
  56. **PARK COUNTY:** A political Subdivision at the State of Montana.
  57. **PARK LAND:** An area of land and/or water with protected status and common use for recreational and/or educational purposes. Park Land cannot include topographical or physical hazards; to be determined by the Board of Commissioners.
  58. **PLANNED UNIT DEVELOPMENT (P.U.D.):** A land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use [Section 76-3-103(10), MCA].
  59. **PLANNING BOARD:** A Planning Board formed pursuant to Title 76, Chapter 1, MCA.
  60. **PLANNING DIVISION:** Division of Park County Community Development Department.
  61. **PLANNING STAFF:** The Park County Community Development Planning Staff.
  62. **PLAT:** A graphical representation of a Subdivision showing the division of land into Lots, parcels, blocks, streets, alleys, and other divisions and dedications.
    - a. Preliminary Plat: A neat and scaled drawing of a proposed Subdivision showing the layout of streets, alleys, Lots, blocks, and other elements of a Subdivision that furnish a basis for review by a Board of Commissioners as more specifically set forth in these regulations and the MSPA.

- b. Final Plat: The final drawing of the Subdivision and dedication required to be prepared for filing for record with the county clerk and recorder containing all elements and requirements set forth in these regulations and the MSPA. (Title 76, Chapter 3, MCA).
  - c. Amended Plat: The final drawing of any change to a filed platted Subdivision, or any Lots within a filed platted Subdivision.
  - d. Vacated Plat: A plat which has been voided under the provisions of Section 76-3-305, MCA, Section 7-5-2501, MCA, Section 7-5-2502, MCA, Section 7-14-2616 (1) and/or (2), MCA, Section 7-14-2617, MCA, Section 7-14-4114 (1) and/or (2), MCA, and Section 7-14-3115, MCA.
63. **PRE-APPLICATION SKETCH (OR DRAWING)**: A legible drawing showing approximate boundaries, dimensions, areas, distances and other pertinent information of a proposed Subdivision, all as more particularly set forth in Section II-A-4(B).
  64. **PRIVATE IMPROVEMENT**: Private Improvements are the same types of improvements as defined under Public Improvements, except the structure or facility has not been dedicated to the public or otherwise acquired by a government entity for public use.
  65. **PRIVATE ROAD**: A road is private if its right-of-way has neither been dedicated nor acquired for public use.
  66. **PUBLIC HEALTH AND SAFETY**: A condition of optimal well being, free from danger, risk, or injury for a community at large, or for all people, as well as for the welfare of a specific individual or a small class of persons.
  67. **PUBLIC IMPROVEMENT**: Any structure or facility constructed to serve more than one Lot in a Subdivision that is dedicated to the public or otherwise acquired by a government entity for public use. Typical public improvements include, but are not limited to, parks, streets or roads, trails, sidewalks, curbs, gutters, and street lighting, utilities, and systems for water supply, sewage disposal, drainage, or fire protection.
  68. **PUBLIC ROAD OR STREET**: A road or street is public if its right-of-way has been dedicated or acquired for public use.
  69. **PUBLIC UTILITY**: A Public Utility has the meaning provided in Section 69-3-101, MCA, and the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, Chapter 13, parts 22 and 23. [SB 116, Section 1, 76-3-103(13)]
  70. **RECREATIONAL CAMPING VEHICLE**: A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motor power or is mounted on or drawn by another vehicle.

71. **RECREATIONAL VEHICLE PARK:** A tract of land available to and principally used by the public for camping, where persons can park Recreational Vehicles for camping and sleeping purposes.
72. **RECREATIONAL VEHICLE SPACE:** A designated portion of a Recreational Vehicle Park designed for the placement of a single Recreational Vehicle and the exclusive use of its occupants.
73. **REMAINDER:** No remainders exist under these regulations. All Lots and tracts on a survey shall be reviewed under these regulations.
74. **REVIEWING AUTHORITY:** The DEQ or local Board of Health or Sanitarian as authorized under Title 76, Chapter 4, MCA.
75. **RIGHTS-OF-WAY:** A linear public way established or dedicated for public purposes by a duly recorded plat, deed, easement, grant, prescription, condemnation, governmental authority or by operation of law, intended to be occupied by a street or road, non-motorized vehicle path, railroad, electric transmission lines, water line, sanitary sewer line, storm sewer line, or other similar uses.
76. **RIVER:** A river, stream, creek, or other naturally occurring body of flowing water with a bed and well-defined banks.
77. **ROAD INSPECTION:** A Road Inspection includes the preliminary review and one final review. Review of variances or re-inspections constitutes a separate Road Inspection and a separate Road Inspection fee.
78. **ROADWAY TYPES:** For purposes of these regulations, Roadway Types are defined as follows:
  - a. Alley: A public or private way reserved as a secondary means of access to the rear or side of Lots which abut on and are served by Public Roads or Streets.
  - b. Arterial: A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two to four lanes of moving traffic and should provide only limited access to abutting property.
  - c. Collector: A street or road having the equally important functions of moving traffic and providing access to adjacent land. Collector streets or roads have two moving traffic lanes and up to two parking lanes.
  - d. Local Roads: A street / road having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets / roads

have two moving lanes of traffic, up to two parking lanes, and provide access to abutting properties.

- e. Dead-End Road: A street or road having only one outlet for vehicular traffic.
  - f. Half-Road: A portion of the width of a road or street, usually located along the perimeter of a Subdivision, the remaining portion of which street must be located on adjacent property if the street or road is to be fully constructed.
  - g. Cul-de-sac: A street or road having only one outlet for vehicular traffic and terminating in a turn-around area.
  - h. Loop: A road or street which begins and ends on the same street, generally used for access to properties and not as a primary or secondary access.
  - i. Frontage Access: Access Service Road: A local or collector road or street, usually parallel and adjacent to an Arterial or Collector, which provides access to abutting properties and controls traffic access to Arterials or Collectors.
79. **SECONDARY ACCESS**: A street / road which meets the definition of Legal and Physical Access and provides an additional means to access the Subdivision.
80. **SLASH**: The accumulation of any burnable, organic material that has been severed/removed from its natural state.
81. **STATE**: The State of Montana.
82. **SUBDIVISION**: A division of land or land so divided which creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any re-Subdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for Recreational Camping Vehicles or Mobile Homes [Section 76-3-103 (16), MCA].
83. **SUBDIVISION ADMINISTRATOR**: The Community Development Department is designated by the Board of Commissioners to perform the duties of review and administration set forth in these regulations; and to act as the Board of Commissioners' authorized agent.
84. **SUBSEQUENT MINOR SUBDIVISION**: Any Subdivision of five or fewer parcels that is not a First Minor Subdivision.
85. **SURVEYOR (PROFESSIONAL LAND SURVEYOR)**: A person licensed in conformance with the Montana Engineers' and Land Surveyors' Act (Title 37, Chapter 67, MCA) to practice surveying in the State of Montana.



86. **SWALE:** A drainage channel or depression designed to direct surface water flow.
87. **TITLE REPORT (ABSTRACT OF TITLE, SUBDIVISION GUARANTEE, OR PLATTING REPORT):** A report from a title service company on the condition of title to the property proposed for Subdivision, which identifies the owners of record of the property, lien holders, encumbrances, easements and restrictions of record, and all other conditions of title of public record, and accompanied by a guarantee of the accuracy of the report from the title insurance agent or its underwriter.
88. **TOPOGRAPHY:** General term to include characteristics of the ground surface such as plains, hills, mountains, slopes, and other physiographic features.
89. **TOWNHOUSE LOT:** Arrangement under which units share a common wall, and individuals own their own units and hold separate title to the land beneath the unit.
90. **TRACT OF RECORD:** An individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office [Section 76-3-103(17)(a), MCA].
91. **TRAIL:** Route on land or water with protected status and public access for recreation or transportation purposes such as walking, jogging, hiking, bicycling, horseback riding, mountain biking, motorized wheelchairs, canoeing, kayaking, and backpacking.
92. **VICINITY SKETCH:** A map at a scale suitable to locate a proposed Subdivision, showing the boundary lines of all adjacent properties and streets and other information necessary to determine the general location of the proposed Subdivision.
93. **WATERCOURSE:** Any naturally occurring stream or river. It does not include ditches, culverts, or other constructed waterways.
94. **WILDLIFE:** Wildlife are animals (e.g. mammals, birds, reptiles, fish) that are neither human nor domesticated, existing in their natural environment.
95. **WILDLIFE FENCING:** A wildlife friendly fencing type approved or recommended by Montana Fish, Wildlife and Parks.
96. **WILDLIFE HABITAT:** Wildlife habitats are geographic areas containing physical or biological features essential to wildlife for breeding, rearing, nesting, and/or winter feeding and forage, or important for migratory patterns; and/or essential to the conservation of listed endangered and threatened species under the Endangered Species Act.

## **I. GENERAL PROVISIONS**

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### **I-A. Title**

These regulations will be known and may be cited as “*The Park County Subdivision Regulations*”; hereinafter referred to as “these Regulations.”

### **I-B. Authority**

Authorization for these regulations is contained in the Montana Subdivision and Platting Act [Title 76, Chapter 3, MCA].

### **I-C. Purpose**

The purposes of these regulations are to promote the public health, safety, and general welfare by regulating the Subdivision of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to promote preservation of open space; to promote cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services; to protect the rights of property owners; and to require uniform monumentation of land Subdivisions and transferring interests in real property by reference to a plat or Certificate of Survey [Section 76-3-102, MCA].

These regulations are intended to comply with Part 5 of the MSPA, and are intended to promote:

1. The orderly development of the jurisdictional area.
2. The coordination of roads within subdivided land with other roads, both existing and planned.
3. The dedication of land for roadways and for Public Utility easements.
4. The improvement of roads.
5. The provision of proper Physical and Legal Access, including obtaining necessary easements.
6. The provision of adequate open spaces for travel, light, air, and recreation.
7. The provision of adequate transportation, water, drainage, and sanitary facilities.

8. The avoidance or minimizing of congestion.
9. The avoidance of Subdivisions which would involve unnecessary environmental degradation.
10. The avoidance of danger or injury by reason of natural hazard, [including fire and wildland fire (effective October 1, 2009)] or the lack of water, drainage, access, transportation, or other public improvements.
11. The avoidance of excessive expenditure of public funds for the supply of Public Improvements and services.
12. The manner and form of making and filing of any plat for subdivided lands.
13. The administration of these regulations by defining the powers and duties of approving authorities, including procedures for the review and approval of all Plats of Subdivisions covered by these provisions.

**I-D. Jurisdiction**

These regulations govern the Subdivision of land within the jurisdictional area of the Board of Commissioners of Park County, Montana.

If a proposed Subdivision lies within one mile of the Town of Clyde Park or within two miles of the City of Livingston, the county Board of Commissioners must submit the preliminary plat to the city or town Board of Commissioners or its designated agent for review and comment. If a proposed Subdivision lies partly within the City of Livingston or the Town of Clyde Park, the preliminary plat must be submitted to, and approved by, both the City of Livingston or the Town of Clyde Park and their governing bodies.

If a proposed Subdivision is located in a rural school district, the Board of Commissioners shall provide a summary of the information contained in the Subdivision application and preliminary plat to school district trustees.

When a proposed Subdivision is also proposed to be annexed to a municipality, the Board of Commissioners of the municipality will combine public hearings and otherwise coordinate the Subdivision review process and annexation procedures whenever possible.

These regulations supplement all other regulations, and where there are discrepancies with other laws, regulations, ordinances, or resolutions, the more restrictive requirements apply. Other regulations include, but are not limited to, zoning regulations, floodplain regulations, building codes, development codes, and fire codes.

**I-E.    Severability**

If a court of competent jurisdiction holds any word, phrase, clause, sentence, paragraph, section, or other part of these regulations invalid, that judgment will affect only the part held invalid.

## **II. GENERAL PROCEDURES**

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*\*The provisions of this section apply to section III, IV, VII, VIII, IX, and X of these regulations.*

### **II-A. Preliminary Plats**

#### **II-A-1. Construction Timing**

Construction work shall not occur on land proposed for Subdivision until the Board of Commissioners has approved the preliminary plat. Construction work undertaken prior to preliminary plat approval subjects the Applicant(s) to the possibility the work will have to be redone or removed. In addition, Section 76-4-121, MCA, regulates Subdivision activities.

#### **II-A-2. Transfers of Title**

Except as noted below, a final Subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. After the preliminary plat of a Subdivision has been approved or conditionally approved, the Applicant(s) may enter into contracts to sell Lots in the proposed Subdivision if all of the following conditions are met [Section 76-3-303, MCA]:

- a. That under the terms of the contracts the purchasers of Lots in the proposed Subdivision shall make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana;
- b. That under the terms of the contracts and the escrow agreement the payments made by purchasers of Lots in the proposed Subdivision may not be distributed by the escrow agent to the Applicant(s) until the final plat of the Subdivision is filed with the county clerk and recorder;
- c. That the contracts and the escrow agreement provide that if the final plat of the proposed Subdivision is not filed with the county clerk and recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract;
- d. That the contracts shall contain the following language conspicuously set out therein: “The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner;”
- e. That the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid; and

- f. A copy of the contracts and escrow agreement described above shall be submitted to the Subdivision Administrator. The purchase price may be blacked out.

**II-A-3. Permission to Enter**

The Board of Commissioners or its designated agent(s) or affected agencies identified during the pre-application meeting may investigate, examine, and evaluate the site of the proposed Subdivision to verify information provided by the Applicant(s) and to subsequently monitor compliance with any conditions if the preliminary plat is conditionally approved. The submission of a Subdivision application constitutes a grant of permission by the Applicant(s) for the Board of Commissioners, its agents, and affected agencies to enter the subject property. This consent applies to members of the public attending a noticed public meeting for a site visit. The public must provide its own transportation.

**II-A-4. Pre-Application Process**

- a. Prior to submittal of a Subdivision application, the Applicant(s), (*is set forth in Applicants definition*) shall request a pre-application meeting with the Subdivision Administrator or authorized agent. The meeting shall occur within 30 days after the Applicant(s) submits a written request for the meeting to the Subdivision Administrator or authorized agent. At the pre-application meeting, all Landowners must be present or represented by an agent with a notarized power of attorney.
- b. For the pre-application meeting request, the Applicant(s) shall provide to the Subdivision Administrator or authorized agent, at least three business days prior to the meeting, a sketch of the proposed Subdivision showing the layout of the proposed features in relation to existing site conditions.
  1. The sketch may be a freehand sketch drawn directly on a print of a topographic map of the area proposed for division at a scale of 1 inch to 400 feet or larger that is adequate to show the property and must include the following:
    - a. Information on the current status of the site, including:
      - i. Location;
      - ii. Approximate tract and Lot boundaries of existing tract of record;
      - iii. Description of general terrain;
      - iv. Natural features on the land, including water bodies, floodplains geologic hazards, and soil types;

- v. Existing structures and improvements;
  - vi. Existing utility lines and facilities serving the area to be subdivided;
  - vii. Existing easements and rights of way;
  - viii. Existing zoning or development regulation standards;
  - ix. Existing conservation easements;
  - x. Existing covenants or deed restrictions; and
  - xi. Noxious weeds.
- b. Documentation on the current status of the site, including:
- i. Ownership information, such as a deed, option to buy or buy-sell agreement, including permission to subdivide;
  - ii. Water rights, including location of Agricultural Water User Facilities;
  - iii. Any special improvement districts; and
  - iv. Rights of first refusal for the property.
2. Information on the proposed Subdivision, including:
- a. Tract and proposed Lot boundaries;
  - b. Proposed Public and Private Improvements;
  - c. Location of utility lines and facilities;
  - d. Easements and Rights Of Way; and
  - e. Public parks, public trails, open space and proposed conservation easements.
3. At the pre-application meeting:

The Subdivision Administrator shall identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the Subdivision review process including, but not limited to:

- a. zoning regulations;
  - b. floodplain regulations;
  - c. building codes; and
  - d. fire codes.
4. The Subdivision Administrator shall provide the Applicant(s) with a list of public utilities, local, state and federal agencies, and any other entities that could have an interest in the proposed Subdivision and that may be contacted for comment by the Subdivision Administrator, Planning Board or Board of Commissioners on the Subdivision application. The Subdivision Administrator shall also identify the timeframes that the public utilities, agencies, and other entities are given to respond; and
5. The Subdivision Administrator shall identify particular additional information the Subdivision Administrator anticipates will be required for review of the Subdivision application. This does not limit the ability of the Subdivision Administrator to request additional information at a later time.
- c. Unless the Applicant(s) submits a Subdivision application within four months for a first minor Subdivision, and six months for a subsequent minor and major Subdivision, of the pre-application meeting, the Applicant(s) must request a new pre-application meeting prior to submitting the Subdivision application.

**II-A-5. Subdivision Application and Preliminary Plat Submittal**

- a. The Applicant(s) shall submit to the Subdivision Administrator two complete and well-organized copies of the Subdivision application addressing these topics and containing the following materials, all described in more detail in application forms provided by the Subdivision Administrator, as applicable:
- 1. A completed and signed Subdivision Application Form;
  - 2. The required review fee and fire review fee;
  - 3. A preliminary plat;
  - 4. A Vicinity Sketch;
  - 5. A topographic map;
  - 6. A grading and drainage plan;
  - 7. Certification of adjoining property owner's list;
  - 8. Preliminary plans for all Public and Private Improvements;
  - 9. Overall development plan if development is in phases;
  - 10. Abstract of Title (or Title Report);
  - 11. Lienholders' acknowledgement of Subdivision;
  - 12. Documentation of Legal and Physical Access;



13. Documentation of existing easements, including those for Agricultural Water User Facilities;
14. Existing covenants and deed restrictions;
15. Existing water rights;
16. Existing mineral rights;
17. Three sets of adhesive labels with names and addresses of all adjoining property owners;
18. Proposed road plans and profiles;
19. Encroachment permits from Montana Department of Transportation or the local jurisdiction;
20. Proposed Easements;
21. Proposed disposition of water rights;
22. Proposed disposition of mineral rights;
23. Letter from Park County Health Department addressing water availability.
24. Parkland dedication calculations;
25. Environmental Assessment;
26. Community Affect Report;
27. Summary of Probable Affects;
28. Transportation Affect analysis or transportation plan;
29. Fire Protection Plan, as well as whether or not the proposed Subdivision is in the wildland-urban interface as may be identified by the United States Forest Service (USFS), the Montana Department of Natural Resources and Conservation, a local Fire Protection Authority (FPA), a local Growth Policy, or a Community Wildfire Protection Plan (CWPP);
30. Weed management plan and re-vegetation plan;
31. Property owners' association documents, including draft articles of incorporation, declaration and bylaws;
32. Flood Insurance Rate Map (FIRM) or Federal Emergency Management Agency (FEMA) panel map and letter identifying floodplain status;
33. Required water and sanitation information;
34. A form of Subdivision Improvements Agreement, if proposed;
35. Letter requesting a revocation of agricultural covenants;
36. Letter indicating presence of cultural or historic resources;
37. Variance request that complies with the provisions under section XI-B of these regulations;
38. Re-zoning application or approval;
39. Flood hazard evaluation;
40. Permission from existing homeowners association, if applicable;
41. Letter identifying and proposing mitigation for potential hazards or other adverse affects as identified in the pre-application meeting and not covered by any of the above required materials; and
42. Such additional relevant and reasonable information as identified by the Subdivision Administrator during the Subdivision review process that is pertinent to the required elements of this section.

## **II-A-6. Review Process**

For both Minor and Major Subdivisions, the initial review process is as follows:

- a. Applicable Materials (Element Review) – [Section 76-3-604(1)(a), MCA]
  1. Within 5 working days of receipt of a Subdivision application and fee, the Subdivision Administrator shall determine whether the application contains all of the applicable materials required by section II-A-5 and shall give written notice to the Applicant(s) of the Subdivision Administrator's determination.
    - a. If the Subdivision Administrator determines that applicable materials are missing from the application, the Subdivision Administrator shall notify the Applicant(s) and identify those missing materials in the notification, and no further action shall be taken on the application by the Subdivision Administrator until the missing materials are submitted.
    - b. The Applicant(s) may correct the deficiencies and submit the missing materials.
    - c. Failure to resubmit the application within one year of being notified of material deficiencies will nullify the Subdivision application.
- b. Sufficiency Review – [Section 76-3-604(2)(a), MCA]
  1. Within 15 working days after the Subdivision Administrator notifies the Applicant(s) that the application contains all of the required materials as provided in paragraph (a) above, the Subdivision Administrator shall determine whether the application and required materials contain detailed, supporting information that is sufficient to allow for the review of the proposed Subdivision under these regulations. The formal review period will not start until the Applicant(s) provide the Subdivision Administrator with the remaining 14 copies of the preliminary plat application and supporting documents. The Applicant(s) shall be provided written notification of the Subdivision Administrator's determination.
    - a. If the Subdivision Administrator determines that the information in the application is not sufficient to allow for review of the proposed Subdivision, the Subdivision Administrator shall identify specific required information and notify the Applicant(s) in writing, and no further action will be taken on the application by the Subdivision

Administrator until the Applicant(s) correct the deficiencies and submit the required information.

- b. The Applicant(s) may correct the deficiencies and submit the required information within one year. Failure to resubmit the required information within one year of being notified of sufficiency deficiencies will nullify the application.
- c. If the Applicant(s) corrects the deficiencies in accordance with (1)(b) above, the Subdivision Administrator shall have 15 working days to notify the Applicant(s) whether the revised application contain detailed, supporting information that is sufficient to allow for review of the proposed Subdivision under these regulations.
- d. This process may be repeated; within the year time frame set forth in (1)(b), until the Applicant(s) submits an application that contains detailed, supporting information that is sufficient for review of the proposed Subdivision under the provisions of these regulations, or the application is withdrawn.

- 2. A determination that an application contains sufficient information for review as provided in this subsection(B) does not ensure that the proposed Subdivision will be approved or conditionally approved by the Board of Commissioners and does not limit the ability of the Subdivision Administrator, Planning Board, or the Board of Commissioners to request additional information during the review process.
- 3. A determination of sufficiency by the Subdivision Administrator pursuant to this subsection does not limit the DEQ from requiring additional water and sanitation information as part of the DEQ review of water and sanitation information.

c. Applicable Regulations

Subdivision review and approval, conditional approval or denial shall be based on the regulations in effect at the time a Subdivision application and preliminary plat are deemed to contain sufficient information for review. If regulations change during the element or sufficiency review, Subdivision review shall be based on the new regulations.

**II-A-7. Restrictive Covenants – Approval, Content and Enforcement by Board of Commissioners**

- A. The Board of Commissioners may require that all County-imposed restrictive covenants governing the use of land within the Subdivision, whether proposed by the Applicant(s) or required by the Board of Commissioners, be set forth in a separate heading identifying them as plat approval Covenants, and indicating: “These County-imposed covenant(s) may not be repealed or amended without prior written consent of the Board of Commissioners.”
- B. The Board of Commissioners may require that specific restrictive Covenants it has required as a condition of plat approval contain the following language: “Park County is a party to this restrictive covenant and may enforce its terms.”
- C. If common property is to be deeded to a property owners’ association, the Covenants and by-laws which govern the association must, at a minimum, provide for the:
  - 1. Formation of a property owners’ association concurrently with the filing of the final Subdivision plat. Articles of Incorporation shall be filed with the Secretary of State’s office;
  - 2. Mandatory membership for each property owner. Purchasers of property shall be required to sign a waiver of right to protest the formation of a maintenance district to maintain improvements; The infrastructure to which the waiver applies needs to be specified, and the waiver is limited to 20 years from the date of filing the final plat.
  - 3. Perpetual reservation of the common property when required under Section 76-3-621(6)(a), MCA;
  - 4. Payment of liability insurance premiums, local taxes, and the cost of maintaining recreational or other facilities;
  - 5. Placement of liens on the property of Lot owners who are delinquent in the payment of association fees and assessments;
  - 6. Adjustment of assessments to meet changing needs;
  - 7. Means of enforcing the Covenants, and of receiving and processing complaints;
  - 8. Transition of control of the association from the declarant to the homeowners;

9. Dissolution of the association and modification of the covenants and restrictions after obtaining the Board of Commissioner's approval of the change; and
10. Regular maintenance of roads, parks, buildings, drainage facilities, and other facilities controlled by the association.

**II-A-8. Public Improvements Agreement; Guaranty (SIA)**

- A. Subdivision Improvements Agreement. Only those improvements not essential to human habitation can be completed under a Subdivision Improvements Agreement.
1. Essential health and safety improvements include, but are not limited to, road access to the Subdivision, road access to each Lot, sewage disposal and water supply facilities, fire protection facilities, intersection improvements, retaining walls and other slope stabilization measures, and traffic safety signage.
  2. Non-Essential improvements include, but are not limited to, road paving, noxious weed management practices, landscaping, road name signs, and park and recreation facilities.
  3. Individual Sanitary System: Where each Lot in a Subdivision is being served by an individual sanitary system it shall not be necessary to install the system before final plat approval is given. However, appropriate permits must be obtained from the Environmental Health Department before the individual sanitary system can be installed.
  4. Alternative Fire Protection Features and Systems [section I-E of Appendix B of these regulations]: Approved alternative fire protection features and systems may be completed through a SIA only when a SIA is required as a condition of final plat approval.
  5. As a condition of final plat approval, the Applicant must have installed all required improvements or have entered into a SIA guaranteeing the construction, installation, and maintenance of all required improvements in conformance with all policies, standards and resolutions adopted by the County. (Section 76-3-507, MCA).
  6. Structures may not be constructed or placed on the parcels until Improvements set forth in subsection (A)(1) related to public health and safety have been installed and engineering plans have been filed.
  7. The Board may require an Applicant (see note below) to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer

lines, water supply lines, and storm drains to a Subdivision. The costs must reasonably reflect the expected impacts directly attributable to the Subdivision. The Board may not require an Applicant to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education. (Section 76-3-510, MCA). All fees, costs, or other money paid by a subdivider under this section must be expended on the capital facilities for which the payments were required

8. Security Guarantee. If the Applicant chooses to enter into a SIA guaranteeing the Non-Essential improvements as identified in subsection (1)(a), the Applicant must have an acceptable monetary security guarantee in the form of a bond, escrow account, surety performance bond, irrevocable letter of credit, or other acceptable guarantee accepted by the Commission. Three bids for the cost of installation of the public improvements shall be obtained by the Applicant. The amount of the guarantee shall be calculated by multiplying 125% by the highest bid. The Board of Commissioners shall be the final decision authority regarding all bids related to a SIA.
9. Phased Development. Where a Subdivision is to be developed in phases, a phase plan shall be prepared by the Applicant, and reviewed and approved by the Board of Commissioners, or its designated agent. The phase plan shall be submitted with the preliminary plat. The phase plan shall be included in the SIA and shall describe which parcels are included in each phase, what improvements shall be completed with each phase, and the approximate completion date of each phase.
  - a. Improvements included in the first phase shall be constructed or guaranteed using one of the acceptable monetary security guarantees prior to final plat approval by the Board.
  - b. The plat approval for each succeeding phase will be contingent upon completion of all improvements in each preceding phase and acceptance of those improvements by the Board.
  - c. If all improvements in each phase are not completed, parcels within subsequent phases shall be restricted from being transferred, sold or developed.
  - d. The restriction on transferring, selling, and development is released and filed with the Clerk & Recorder's office only after the necessary improvements for each particular phase are constructed, reviewed, and accepted by the Board, or guaranteed using one of the acceptable monetary security guarantees.

10. Reduction of Guarantees. In those cases where monetary security guarantees have been made, the amount of the guarantee may be reduced upon installation and acceptance by the Board of the required improvements. The amount of the reduction shall not exceed the percentage that the accepted improvements made of all originally required improvements.
  11. Completion of Improvements; Certification. As the Public Improvements are installed, the Applicant shall provide a letter to the Board indicating such, including a copy of the engineered plans.
    - a. The Board- designated agent or consulting engineer designated by the Board shall review and certify that all Public Improvements have been installed in conformance with the plans and specifications.
    - b. If the Board determines that a consulting engineer is needed to review and certify the Public Improvements, the Applicant shall pay for the cost of the engineering services (*See*, section III-A-6-B-4-vi of these regulations).
    - c. Prior to the release of the guarantee a copy of the plans, stamped by the project surveyor or engineer in accordance with their licensing provisions, shall be filed in the Clerk and Recorder's Office with reference to the final Subdivision plat.
- B. Improvement Guarantee. The Applicant shall provide a guarantee that the improvements will be satisfactorily completed and are guaranteed for 12 months.
- d. Release of Guarantee. Upon completion of required improvements by the Applicant and acceptance of them by the Board, the Applicant may request that the Board authorize the release of any remaining portion of the improvement guarantee up to 90% of the original amount. The remaining 10% will be released after any deficiencies are corrected after the one year warranty inspection. The request and release shall both be in writing.
  - e. Rural and Special Improvement Districts. The Board may enter into an agreement with the Applicant, and the owners of the property proposed to be subdivided if other than the Applicant, that the installation of required improvements will be financed through a special or rural improvement district created pursuant to Title 7, Parts 12 and 41, MCA. This agreement must provide that no parcels within the Subdivision will be sold, rented or leased, and no contract for the sale of parcels can be executed before the improvement district has been created.

The Applicant, or other owners of the property other than the Applicant, must also petition the Board to create a rural improvement district, which constitutes a waiver by the Applicant or the other owners of the property of the right to protest, or petition against the creation of the district under either Section 7-12-2109 or

Section 7-12-4110, MCA. This waiver must be filed with the County Clerk and Recorder's Office and will be deemed to run with the land.

**II-A-9. Amending Approved Preliminary Plats Before Final Plat Approval**

- A. If the Applicant(s) proposes to change the preliminary plat after the preliminary plat approval but before the final plat approval, the Applicant(s) shall submit the proposed changes to the Subdivision Administrator for review.
1. Within five working days of receiving the proposed changes, the Subdivision Administrator shall determine whether the changes to the preliminary plat are material pursuant to subsection (B) below.
  2. If the Subdivision Administrator determines the changes are material, the Subdivision Administrator shall require the Applicant(s) to begin the Subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee.
  3. If the Subdivision Administrator determines the changes are not material, s/he shall accept the changes, and notify the Applicant(s) and the Board of Commissioners of that decision. The Board of Commissioners shall approve of those changes in a meeting for which notice has been given of non-material changes to the final plat.
- B. The following changes, although not a complete list may be considered material:
1. Reconfiguration or number of Lots; that results in an increased number of Lots or redesign of six or more Lots.
  2. Road layout;
  3. Water and/or septic proposals;
  4. Configuration of park land or open spaces;
  5. Easement provisions;
  6. Designated primary or Secondary Access;
  7. Proposed covenants; or
  8. Change to conditions of approval.
- C. An Applicant(s) whose proposed changes to the preliminary plat that have been deemed material by the Subdivision Administrator may appeal the Subdivision Administrator's decision to the Board of Commissioners by written notice within 10 working days. The Applicant(s) may request a hearing and may submit



additional evidence to show why the changes to the preliminary plat should not be considered material.

**II-B. Final Plats**

**II-B-1. Final Plat Contents**

The final plat submitted for approval must conform to the preliminary plat as previously reviewed and approved by the Board of Commissioners and must incorporate all required modifications and comply with all conditions imposed at the time of Subdivision application and preliminary plat approval. The final plat and accompanying documents shall comply with the *Montana Uniform Standards for Final Subdivision Plats* [ARM 24.183.1101, 1104, and 1107] (Appendix A)

**II-B-2. Final Plat Initial Review**

**A. Final Plat Submittal**

The final plat approval application form and all supplementary documents must be submitted to the Subdivision Administrator at least 30 working days prior to the expiration of preliminary plat approval (See, section III-A-6.F.1, and section IV-A-8.F.1). The Subdivision Administrator will not accept, begin processing, nor schedule any actions on a final plat submittal until a complete application and fee, and copies of the final plat have been received. The submittal shall include:

1. The final plat application;
2. The final plat review fee;
3. A statement from the Applicant(s), included in the definition of applicant or project surveyor or engineer describing how each condition of approval has been satisfied;
4. A title report or updated abstract dated no less than 30 days prior to the date of submittal;
5. The DEQ or local environmental health department approval;
6. the final grading and drainage plan, including all road plans and profiles, state or local encroachment permits, and the traffic Affect analysis (if required);
7. All engineering plans;

8. Any homeowner association documents, including bylaws, covenants, and declarations and deeds to the homeowner association for common property;
9. One 11" x 17" and one 18" x 24" or larger copies of the final plat, completed in accordance with the *Uniform Standards for Final Subdivisions Plats* set forth in Appendix A.

B. Review by Subdivision Administrator

1. Within fifteen working days the Subdivision Administrator shall review the final plat to ascertain that all conditions and requirements for final plat approval have been met. If the Subdivision Administrator determines that the final plat application does not comply with the applicable Subdivision regulations or conditions of final plat, the Subdivision Administrator will notify the Applicant(s) of all deficiencies and no further action will be taken until the Applicant(s) correct the deficiencies and submit the required information to the Community Development Office.
2. If the final plat application contains deficiencies, as identified in II-B.2.B, the Applicant(s) will be given up to the expiration of the governing body approval period or 30 working days, whichever is greater, to correct the deficiencies and submit the required information to the Community Development Office.
3. If the Subdivision Administrator determines that the final plat application is in compliance with all relevant Subdivision regulations and conditions of final plat, or if the governing body approval period has expired, the Subdivision Administrator will schedule a public meeting before the Board of Commissioners. At the public meeting the Board of Commissioners will review and consider the Final Plat Application and relevant information in accordance with section II-B-3.
3. If the Subdivision Administrator determines that the final plat differs from the approved or conditionally approved preliminary plat, the Applicant(s) must submit an amended application pursuant to section II-B-5.
4. The Subdivision Administrator may require that final Subdivision plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the Clerk and Recorder's Office. The Applicant(s) may be required to pay for all, or a portion of, the fees required by the examining land surveyor. When the survey data shown on the plat meets the conditions pursuant to these regulations, the examining surveyor shall certify the compliance in a printed or stamped signed certificate on the plat.

### **II-B-3. Final Plat Approval**

#### **A. Approval by the Board of Commissioners**

The Board of Commissioners shall examine every final Subdivision plat and shall approve it if it conforms to the conditions of preliminary plat approval and to the terms of the MSPA and these regulations, or deny it pursuant to the following:

1. If the final plat is approved, the Board of Commissioners shall certify its approval on the face of the final plat. When applicable, a certificate of the Board of Commissioners expressly accepting any dedicated land, easements, or improvements will be filed with the final plat; or
2. If the Board of Commissioners determines the final plat does not comply with all relevant Subdivision regulations or conditions of final plat, the Board of Commissioners shall write a letter stating the reason for denial and forward a copy to the Applicant(s). The Board of Commissioners will return the final plat application and determination to the Applicant(s) within 10 working days of the action. If the governing body approval time period has not expired, the Applicant(s), after making the necessary corrections, may resubmit the final plat application in accordance with section II-B of these regulations. If the governing body approval period has expired the preliminary plat approval will become null and void.

#### **B. Inaccurate Information**

The Board of Commissioners may withdraw approval of a final plat if it determines that material information provided by the Applicant(s) is inaccurate.

### **II-B-4. Final Plat Filing**

After it is approved, the final plat may not be altered except as provided in section II-B-8 5[Amending Filed Plats]. The County Clerk and Recorder's Office may not accept any plat for filing that does not bear the Board of Commissioners Office approval in proper form or that has been altered. The County Clerk and Recorder may file an approved plat only if it is accompanied by the documents specified in the *Montana Uniform Standards for Monumentation, and Final Subdivision Plats*, contained in Appendix A.

### **II-B-5. Amending Filed Plats**

- A. Unless subject to section V-E-4 of these regulations [Relocation of Common Boundaries Involving Platted Subdivisions], changes that materially alter any portion of a filed plat, its land divisions or improvements, or that will modify the approved use of land within the Subdivision, must be made by filing an amended plat showing all alterations. Material alterations or any alteration which cumulatively increases the number of Lots or modifies six or more Lots, or

abandons or alters a public road Right-Of-Way or parkland dedication may be subject to the review procedures pursuant to chapter II, III, and IV, as appropriate.

1. The following changes, although not a complete list may be considered material:
  1. Reconfiguration or number of Lots; that results in an increased number of Lots or redesign of six or more Lots.
  2. Road layout;
  3. Water and/or septic proposals;
  4. Configuration of park land or open spaces;
  5. Easement provisions;
  6. Designated primary or Secondary Access;
  7. Proposed covenants; or
  8. Change to conditions of approval.
- B. The Board of Commissioners may not approve an amended final plat without the written consent of the owners and lienholders of all Lots which will be modified by the proposed amendment.
- C. The Board of Commissioners may not approve an amendment that will place a Lot in non-conformance with the standards contained in section VI [Design and Improvement Standards] of these regulations or with local zoning regulations unless the Board of Commissioners holds a public hearing on the amendment and issues a written variance from the standards pursuant to section XI-B [Variances].
- D. The final amended plat submitted for approval must comply with the requirements for final Subdivision plats under the *Uniform Standards for Filing Final Plats* (Appendix A)

### **III. REVIEW AND APPROVAL PROCEDURES FOR FIRST MINOR SUBDIVISIONS**

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First Minor Subdivisions shall be reviewed pursuant to chapter III-A and Subsequent Minor Subdivisions shall be reviewed pursuant to chapter III-B.

#### **III-A. First Minor Subdivision Review**

The pre-application process and initial review process set forth in section II, General Procedures, apply to this section.

#### **III-A-1. First Minor Subdivision Application and Preliminary Plat Submittal**

- A. The Applicant(s) shall submit to the Subdivision Administrator pre-application materials identified in sections II-A-4 (Pre-application Process) and a Subdivision application containing the materials identified in II-A-5 (Subdivision Application and Preliminary Plat Submittal).
- B. Sufficient documentary evidence from the public records shall be provided demonstrating that the Subdivision will be the First Minor Subdivision from a tract of record.

#### **III-A-2. First Minor Subdivision Exceptions**

The following do not apply to First Minor Subdivisions:

- A. Preparation of an environmental assessment, in accordance to Section 76-3-603(2), unless the first minor falls within Section 76-3-609(2)(c); ,MCA;
- B. public hearing requirements; and
- C. review of the Subdivision application for the effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety, *if* the Subdivision is proposed in a jurisdictional area that has adopted zoning regulations that address those affects.

#### **III-A-3. First Minor Subdivision Review Process**

##### **A. Time Period for Approval, Conditional Approval, or Denial**

Within 35 working days, the Board of Commissioners at a public hearing shall approve, conditionally approve or deny the proposed Subdivision according to section III-A-6 of these regulations, unless the Applicant(s) and the Subdivision Administrator agree to an extension or suspension of the review period, not to exceed one year. The review period of 35 working days begins the day after the

Subdivision Administrator notifies the Applicant(s) in writing that the Subdivision application is sufficient for review.

B. Public Agency and Utility Review

Review and comment by public agencies or utilities may not delay the Board of Commissioners' action on the Subdivision application beyond the 35-working day review period. The Board of Commissioners will make these comments available to the Applicant(s) and to the general public upon request. If, during the review of the application, the Subdivision Administrator or the Planning Board contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the Subdivision Administrator shall notify the Applicant(s) of the contact and the timeframe for response.

**III-A-4. First Minor Planning Board Consideration and Recommendation**

A. Recommendation

1. Consideration-Standards

In recommending approval, conditional approval or denial of the Subdivision application and preliminary plat, the Planning Board shall base its recommendation on whether the Subdivision application and preliminary plat meet the following:

- a. These regulations, including but not limited to the standards set forth in Chapter VI [Design and Improvement Standards];
- b. Applicable zoning regulations;
- c. MSPA, including but not limited to Section 76-3-608 (3) [Primary Criteria], MCA as delineated in section III-A-6(A)[Prerequisites to Approval] and (B)(4)[Affects] of these regulations; and
- d. Other applicable regulations.

2. Consideration-Evidence

In recommending approval, conditional approval or denial of the Subdivision application and preliminary plat, the Planning Board may consider the following:

- a. The Subdivision Application, General Description and Information, and Preliminary Plat Form, Contents, and Supplements;

- b. Summary of Probable Affects, and Community Affect Report;
  - c. Park County's growth policy;
  - d. Subdivision Administrator's staff report and recommendation; and
  - e. Any additional information authorized by law.
3. Written Recommendation

Within 10 working days after the public hearing, the Planning Board shall submit the following, in writing, to the Applicant(s) and the Board of Commissioners:

- a. Recommended findings of fact based on the evidence in subsection(A)(2) above that discuss and consider the Subdivision's compliance with and affect on the items listed in subsection(A)(2) of these regulations;
- b. A recommendation for approval, conditional approval (including any recommended conditions and mitigation measures), or denial of the Subdivision application and preliminary plat; and
- c. A recommendation for approval or denial of any requested variances (See section XI-B).

B. Water and Sanitation Information

The Planning Board shall request public comment on water and sanitation information and the Planning Board or Subdivision Administrator shall collect public comment regarding the water and sanitation information required by MSPA and these regulations. The Planning Board shall forward all comments regarding water and sanitation to the Board of Commissioners.

**III-A-5. Applicant(s) Preference for Mitigation**

No later than two working days before the public hearing at which the Board of Commissioners is to consider the Subdivision application and preliminary plat, the Applicant(s) may submit in writing to the Subdivision Administrator comments on and responses to the Planning Board's recommendations. The applicant(s) may also submit any proposed mitigation measures not already discussed with the Planning Board. The Board of Commissioners will consult with the Applicant(s) and will give due weight and consideration to the Applicant's expressed preference regarding mitigation. [Section 76-3-608(5)(b), MCA].

### **III-A-6. First Minor Subdivision Board of Commissioners Decision and Documentation**

#### **A. Prerequisites to Approval**

The Board of Commissioners shall not approve or conditionally approve a Subdivision application and preliminary plat unless the proposed Subdivision:

1. Provides easements for the location and installation of any planned utilities, both on and off site;
2. Provides Legal and Physical Access to each parcel within the Subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
3. Assures that all required Public or Private Improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by section II-B-4 of these regulations;
4. Assures that the requirements of Section 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Section VI-O have been considered and will be accomplished before the final plat is submitted;
5. Assures that the requirements of Section 76-3-504(1)(k) MCA, regarding watercourse and irrigation easements as set forth in section VI-N have been considered and will be accomplished before the final plat is submitted.;
6. Provides proposed construction techniques or other mitigation measures if the Subdivision is in the wildland-urban interface, as designated in Section VI-R (effective October 1, 2009).;
7. Parkland Dedication: The Board has the option to require park land, if it chooses to do so then it must be a prerequisite for final plat if the proposal is:
  - (i) a subsequent minor Subdivision as described in MCA 76-3-609(3); or
  - (ii) a first minor Subdivision from a tract of record as described in MCA 76-3-609 (2) if:
    - (A) the Subdivision plat indicates development of condominiums or other multifamily housing;
    - (B) zoning regulations permit condominiums or other multifamily housing; or
    - (C) any of the Lots are located within the boundaries of a municipality.



B. Consideration – Standards

In approving, conditionally approving, or denying a First Minor Subdivision application, the Board of Commissioners shall consider subsection (A) above and whether the proposed Subdivision complies with:

1. These regulations, including but not limited to, the standards set forth in Chapter VI;
2. Applicable zoning regulations;
3. Other applicable regulations, including but not limited to, floodplain regulations and airport affected area regulations;
4. MSPA, including but not limited to the following affects:
  - a. Affect on agriculture, including but not limited to;
    - i. Affect on adjacent agricultural operations.
    - ii. Interference with the movement of livestock or farm machinery.
    - iii. Interference with agricultural production and facilities.
    - iv. Maintenance of fences.
    - v. Proliferation of weeds.
    - vi. Increased human activity and nuisance complaints.
    - vii. Harassment of livestock by pets.
    - viii. Restrictions on diversification of existing agricultural land uses.
    - ix. Affect on agricultural soils.
    - x. Restrictions on weed spraying, dust, livestock odors and noise which are incidental to agricultural operations.
    - xi. Affect of increased traffic resulting from the Subdivision on surrounding agricultural operations.
  - b. Affect on agricultural water user facilities, including but not limited to;
    - i. Affect on water availability for agricultural water users.
    - ii. Affect on owner of water user facilities.
      - a. Access for maintenance; and
      - b. Liability and risk of accidents involving trespassers.
    - iii. Affects on facility users and potential conflicts with

- Subdivision residents;
      - a. Seeps, flooding, and washouts.
      - b. Obstructions and interference.; and
      - c. Unintended uses (recreation and landscaping).
      - d. Maintenance access.
  - iv. Affects to water right holders, including how water rights will be transferred or otherwise allocated.
- c. Affect on local services, including but not limited to;
  - i. Affect on current and planned level of service capacity.
    - a. Sheriff.
    - b. Park County Volunteer Fire Departments.
    - c. Emergency Medical Services.
    - d. Road, bridges, culverts, and cattle guards.
    - e. Schools.
    - f. Solid Waste Facilities.
    - g. Water and Wastewater Facilities.
  - ii. Affect on cost of services.
    - a. Current and anticipated tax revenues.
    - b. Cost of services for the Subdivision.
    - c. Evaluate need for special or rural improvements districts.
  - iii. Affect on county roads.
    - a. Evaluate the need to accept new county roads.
- d. Affect on the natural environment, including but not limited to;
  - i. Affect on air quality.;
  - ii. Affect on groundwater quality and quantity.;
  - iii. Affect on surface water features.;
  - iv. Affect on wetlands.;
  - v. Affect on residential ambient exterior light level.;
  - vi. Affect on historic and prehistoric sites.
- e. Affect on wildlife and wildlife habitat, including but not limited to;
  - i. Affect of Subdivision location and access roads on wildlife habitat, including nesting sites, winter range, travel corridors (migration routes) and wetlands.
  - ii. Affect and potential of human-wildlife conflicts.
  - iii. Affect and potential of pet-wildlife conflicts; and
- f. Affect on public health and safety, including but not limited to;
  - i. Affect on traffic safety.

- ii. Affect on emergency vehicles access and response time (sheriff, fire, and ambulance).
  - iii. Affect on groundwater quality due to the cumulative effect of septic systems and/or wells.
  - iv. Affect of exposure to natural/or man-made hazards.
  - v. Affect of development on adjacent land uses.
5. Proposed mitigation in accordance with section III-A-5[Applicant(s) preference for mitigation].
  6. The Board of Commissioners may assess all or a portion of the costs of employing outside expertise necessary to properly review a proposed Subdivision to the Applicant(s).

C. Consideration – Evidence

In making its decision to approve, conditionally approve, or deny a proposed First Minor Subdivision the Board of Commissioners may consider and weigh the following:

1. The Subdivision Plat Application, General Description and Information, Preliminary Plat Form, Contents, and Supplements;
2. Summary of Probable Affects, and Community Affect Report;
3. Park County’s growth policy;
4. Subdivision Administrator's staff report and recommendations;
5. Planning Board recommendation; and
6. Any additional information authorized by law.

D. Water and Sanitation-Special Rules

1. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for approval, conditional approval or denial of a Subdivision only if the Board of Commissioners makes specific findings of fact justifying their decision.
2. For a proposed Subdivision that will create one or more parcels containing less than 20 acres, the Applicant(s) shall obtain approval by the DEQ as a condition of approval of the final plat. This approval applies to the development of Lots at the time of the approval and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the Lots are actually developed.

3. For a proposed Subdivision that will create one or more parcels containing 20 acres or more, the Applicant(s) shall demonstrate that there is an adequate water source and at least one area for a septic system and a replacement drain field for each Lot in order to obtain final plat approval. This demonstration to the local reviewing authority is to evaluate the ability to develop Lots at the platting stage.
4. The Board of Commissioners shall request and collect public comment on water and sanitation information and shall make any comments submitted, or a summary of the comments submitted, available to the Applicant(s) within 30 days after conditional approval or approval of the Subdivision application and preliminary plat.
5. The Applicant(s) shall, as part of the Applicant(s)' application for sanitation approval, forward the comments and/or the summary provided by the Board of Commissioners to the:
  - a. Reviewing Authority [DEQ] provided in Montana Code Annotated, Title 76, chapter 4, for Subdivisions that will create one or more parcels containing less than 20 acres; or
  - b. Local health department or board of health for proposed Subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

E. Documentation of Board of Commissioners Decision

1. In rendering its decision to approve, conditionally approve, or deny the proposed Subdivision the Board of Commissioners shall issue written findings of fact that discuss and weigh the proposed Subdivision's compliance with the above Subsections III-A-6 (A)-(D)
2. When the Board of Commissioners approves, conditionally approves, or denies the proposed Subdivision, it shall send the Applicant(s) a written letter of the decision within 30 working days following a decision, with the appropriate signature, and make the letter available to the public. The letter shall:
  - a. Contain information regarding the appeal process for the denial or imposition of conditions;
  - b. Identify the regulations and statutes that are used in reaching the decision to approve, conditionally approve, deny, or impose conditions and explain how they apply to the decision;

- c. Provide the facts and conclusions that the Board of Commissioners relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision;
- d. Provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved; and
- e. Set forth the time limit for approval, pursuant to subsection (F) below.

F. Subdivision Application and Preliminary Plat Approval Period

- 1. Upon approval or conditional approval of the preliminary plat, the Board of Commissioners shall provide the Applicant(s) with a dated and signed statement of approval. The approval shall be in force for no more than three calendar years.
  - a. At least thirty (30) working days prior to the expiration of the preliminary plat approval, the Board of Commissioners may, at its discretion and at the written request of the Applicant(s), extend its approval for a period of one additional year.
  - b. The Board of Commissioners may extend the approval for more than one year if that approval period is included as a specific condition of a written Subdivision improvements agreement between the Board of Commissioners and the Applicant(s), provided for in Section II-B-4.
- 2. After the application and preliminary plat are approved, the Board of Commissioners may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires, at which time a new application shall be required.
- 3. The Board of Commissioners may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the Applicant(s), and upon which the approval or conditional approval was based, is inaccurate.

**III-A-7. First Minor Subdivisions – Amended Applications**

- A. If the Applicant(s) changes the Subdivision application or preliminary plat before the Board of Commissioners make its decision, the Applicant(s) shall submit the amended application or preliminary plat to the Subdivision Administrator for review.

1. Within five working days of receiving the amended application or preliminary plat, the Subdivision Administrator shall determine whether the changes to the Subdivision application or preliminary plat are material, as determined in subsection (C) below.
  2. The 35-working day review period is suspended while the Subdivision Administrator considers the amended application or preliminary plat.
  3. If the Subdivision Administrator determines the changes are not material, the 35-working day review period resumes when the Subdivision Administrator mails notice of the decision to the Applicant(s).
  4. If the Subdivision Administrator determines the changes are material, the Subdivision Administrator shall either require the Applicant(s) to schedule a new pre-application meeting and resubmit the application and preliminary plat as a new Subdivision application, or require the Applicant(s) to present the changes to the Planning Board for consideration of the changes only.
- B. By making changes to a pending Subdivision application or preliminary plat, the Applicant(s) consents to suspension of the review period as provided in paragraph (A)(2).
- C. The following changes, although not a complete list may be considered material:
1. Reconfiguration or number of Lots; that result in an increased number of Lots or redesign of six or more Lots.
  2. Road layout;
  3. Water and septic proposals;
  4. Configuration of park land or open spaces;
  5. Easement provisions;
  6. Proposed Covenants; and
  7. Designated primary or secondary access.
- D. An Applicant(s) whose Subdivision application or preliminary plat has been deemed materially changed by the Subdivision Administrator may appeal the Subdivision Administrator's decision to the Board of Commissioners. The Applicant(s) may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.

1. By appealing the decision of the Subdivision Administrator, the Applicant(s) agrees to suspension of the 35-working day review period. The 35-working day review period will resume when the Board of Commissioners decision concerning the appeal is made.
2. If the Board of Commissioners concludes that the evidence and information demonstrate that the changes to the Subdivision application or preliminary plat are material, the Board of Commissioners shall require the Subdivision application and preliminary plat to be resubmitted pursuant to subsection (A)(4).
3. If the Board of Commissioners concludes the evidence and information demonstrate the changes to the Subdivision application or preliminary plat are *not* material, the 35-working day review period resumes as of the date of the decision.

#### **III-A-8. First Minor Subdivision Final Plat**

The final plat must include the final plat contents in accordance with section II-B-1, and be submitted and reviewed in accordance with the appropriate requirements contained in section II-B-2 [Final Plat Review].

#### **III-B. Subsequent Minor Subdivisions**

A Subsequent Minor Subdivision is any Subdivision with five or fewer Lots that is not a First Minor Subdivision. Subsequent Minor Subdivisions shall be reviewed as Major Subdivisions. All the requirements and procedures of chapter IV of these regulations shall be followed for subsequent minor Subdivisions.

## **IV. REVIEW AND APPROVAL PROCEDURES FOR SUBSEQUENT MINOR AND MAJOR SUBDIVISIONS**

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### **IV-A. Review and Approval Procedures for Major Subdivisions**

Subdivisions that qualify for major Subdivision review are those divisions of land containing six or more Lots, or Subdivisions of five or fewer Lots that do not otherwise qualify for review as First Minor Subdivisions under Section 76-3-609, MCA, and these regulations.

The pre-application process and initial review process set forth in Chapter II, General Procedures, apply to this Chapter.

#### **IV-A-1. Subdivision Application and Preliminary Plat Submittal**

- A. The Applicant(s) shall submit to the Subdivision Administrator pre-application materials identified in sections II-A-4 (Pre-application Process) and a Subdivision application containing the materials identified in II-A-5 (Subdivision Application and Preliminary Plat Submittal).

#### **IV-A-2. Time Period for Approval, Conditional Approval, or Denial**

- A.
1. Within sixty (60) working days, or eighty (80) working days if the proposed Subdivision contains 50 or more Lots, the Board of Commissioners shall approve, conditionally approve, or deny the proposed Subdivision according to section IV-A-8 of these regulations.
  2. A Subdivision application is deemed submitted for review, and the 60-working or 80-working day period, whichever is relevant, begins when the Subdivision Administrator notifies the Applicant(s) in writing that the application contains sufficient information to conduct review.
  3. If the Applicant(s) and the Subdivision Administrator agree to an extension or suspension of the review period, or a subsequent public hearing is held pursuant to section IV-A-7 of these regulations the provisions of paragraph 1, above, do not apply
  4. If the governing body fails to comply with the time limits under paragraph 1, above, the Board shall pay to the Applicant a financial penalty of fifty dollars (\$50) per Lot per month or a *pro rata* portion of a month, not to exceed the total amount of the Subdivision review fee collected by the Board for the Subdivision



application, until the Board denies, approves, or conditionally approves the Subdivision

B. Public Agency and Utility Review

Review and comment by public agencies or utilities may be requested by the Board of Commissioners and may not delay the Board of Commissioner's action on the Subdivision application beyond the 60-working day review period. The Board of Commissioners will make these comments available to the Applicant(s) and to the general public upon request. If, during the review of the application, the Subdivision Administrator or the Planning Board contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the Subdivision Administrator shall notify the Applicant(s) of the contact and the timeframe for response.

**IV-A-3. Public Hearings and Notices – In General**

A. Hearings

When required by these regulations, the Planning Board and the Board of Commissioners shall each hold a public hearing on the Subdivision application.

B. Notice

1. The Planning Board and Board of Commissioners shall give notice of the times, dates and locations of the hearings by publication in a newspaper of general circulation in the county not less than 15 days prior to the dates of the hearings.
2. At least 15 days prior to the dates of the hearings, the Planning Board and the Board of Commissioners shall give notices of the hearings by certified mail to the Applicant(s), each adjoining landowner to the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.

**IV-A-4. Planning Board Hearing, Consideration and Recommendation**

A. Hearing

After the Subdivision application is deemed to have all the required materials and contain detailed, supporting information that is sufficient to allow for review, and the Subdivision Administrator has prepared a staff report, the Planning Board shall schedule and hold a public hearing on the Subdivision application.

B. Recommendation

1. Consideration-Standards

In recommending approval, conditional approval or denial of the Subdivision application and preliminary plat, the Planning Board shall base its recommendation on compliance of the Subdivision application with the following:

- a. These regulations, including but not limited to the standards set forth in section VI [Design and Improvement Standards];
- b. Applicable zoning regulations;
- c. MSPA, including but not limited to Section 76-3-608(3), as contained in sections IV-A-8(A)[Prerequisites to Approval] and IV-A-8(B)(4)[Effects] of these regulations; and
- d. Other applicable regulations.

2. Consideration-Evidence

In recommending approval, conditional approval or denial of the Subdivision application and preliminary plat, the Planning Board may consider the following:

- a. The Subdivision Plat Application, General Description and Information, and Preliminary Plat Form, Contents, and Supplements;
- b. Environmental Assessment; including a Summary of Probable Affects, and a Community Affects Report;
- c. Park County's adopted growth policy;
- d. Information provided at public hearing(s);
- e. Subdivision Administrator's staff report and recommendation; and
- f. Any additional information authorized by law.

3. Written Recommendation

Within 10 working days after the public hearing, the Planning Board shall submit the following, in writing, to the Applicant(s) and the Board of Commissioners:

- a. Recommended findings of fact based on the evidence in subsection (B)(2) above that discuss and consider the Subdivision's compliance with and Affect on the items listed in paragraph (B)(1) above of these regulations; and
- b. A recommendation for approval, conditional approval (including any recommended conditions and mitigation measures), or denial of the Subdivision application and preliminary plat.
- c. A recommendation for approval or denial of any requested variances. (See sub-section XI-B [Variances]).

C. Water and Sanitation Information

The Planning Board or Planning Staff shall collect public comment regarding the water and sanitation information required by the MSPA and these regulations. The Planning Board shall forward all comments regarding water and sanitation to the Board of Commissioners.

**IV-A-5. Applicant(s) Preference for Mitigation**

No later than two working days before the meeting or hearing at which the Board of Commissioners is to consider the Subdivision application and preliminary plat, the Applicant(s) is encouraged to submit in writing to the Subdivision Administrator the Applicant(s) comments on and responses to the Planning Board's recommendations, as well as any proposed mitigation measures not already discussed with the Planning Board. The Board of Commissioners will consult with the Applicant(s) and will give due weight and consideration to the Applicant(s) expressed preference regarding mitigation.

**IV-A-6. Board of Commissioners Hearing**

- A. After the Planning Board makes its recommendation, the Board of Commissioners shall hold a public hearing on the Subdivision application.
- B. All comments and documents regarding the Subdivision shall be submitted to the Subdivision Administrator, rather than to the Board of Commissioners directly.
- C. The Board of Commissioners shall determine whether public comments or documents presented for consideration at the Board of Commissioners' public hearing constitute either:
  - 1. Information or analysis of information that was presented at the Planning Board hearing on the Subdivision application that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment, in which case the Board of

Commissioners shall proceed to its decision whether to approve, conditionally approve, or deny the proposed Subdivision; or

2. New information or analysis of information that has never been submitted as evidence or considered by the Planning Board at a hearing on the Subdivision application, in which case the Board of Commissioners shall proceed as set forth in subsection (D) below.
- D. If the Board of Commissioners determines that public comments or documents presented at the hearing constitute new information or an analysis of information regarding the Subdivision application that has never been submitted as evidence or considered by the Planning Board at the public hearing on the Subdivision application, the Board of Commissioners shall determine whether the public comments or documents are relevant and credible with regard to the Board of Commissioners' decision, pursuant to this subsection or subsections (E) and (F) below.
1. If the Board of Commissioners determines the information or an analysis of the information is either not relevant or not credible, then the Board of Commissioners shall approve, conditionally approve, or deny the proposed Subdivision without basing its decision on the new information or analysis of information; or
  2. If the Board of Commissioners determines the new information or analysis of information is relevant and credible, then the Board of Commissioners shall schedule a subsequent public hearing before the Planning Board pursuant to section IV-A-7[Subsequent Public Hearing].
  3. At the subsequent hearing the Planning Board shall consider only the new information or analysis of information that may have an Affect on the recommended findings and conclusions that the Board of Commissioners will review in making its decision on the proposed Subdivision.
- E. New information or analysis of information is considered to be relevant if it may have an Affect on the findings and conclusions that the Board of Commissioners will rely upon in making its decision on the proposed Subdivision.
- F. New information or analysis of information is considered to be credible if it is based on one or more of the following:
1. Physical facts or evidence;
  2. Supported personal observations;
  3. Evidence provided by a person with professional competency in the subject matter; or

4. Scientific data supported by documentation.

**IV-A-7. Subsequent Public Hearing**

- A. If a subsequent public hearing is held pursuant to section IV-A-6, it must be held within 45 days of the Board of Commissioners' determination to schedule a subsequent hearing. The Planning Board shall consider only the new information or analysis of information that may have an Affect on the findings and conclusions that the Board of Commissioners will rely upon in making its decision on the proposed Subdivision. Notice requirements for a subsequent public hearing are the same for an initial public hearing in accordance with section IV-A-6[Governing Body Hearing].
- B. If a subsequent public hearing is held, the 60-working day review period is suspended as of the date of the Board of Commissioner's decision to schedule a subsequent hearing. The 60-working day review period resumes on the date of the next scheduled public hearing before the Board of Commissioners for which proper notice can be provided.

**IV-A-8. Board of Commissioners Decision and Documentation**

A. Prerequisites to Approval

The Board of Commissioners may not approve or conditionally approve a Subdivision application and preliminary plat unless the proposed Subdivision:

1. Provides easements for the location and installation of any planned utilities;
2. Provides Legal and Physical Access to each parcel within the Subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
3. Assures that all required Public or Private Improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by section II-B-4[Public Improvements Agreement; Guarantee] of these regulations;
4. Assures that the requirements of Section 76-3-504(1)(j)[parcels averaging less than five-acres], MCA, regarding the disclosure and disposition of water rights as set forth in section VI-O[Disposition of Water Rights] have been considered and will be accomplished before the final plat is submitted;

5. Assures that the requirements of Section 76-3-504(1)(k)[establish ditch or pipeline easement], MCA, regarding irrigation easements as set forth in section VI-N have been considered and will be accomplished before the final plat is submitted; and
6. For subsequent minor and major Subdivisions, provides for the appropriate park dedication or cash-in-lieu. Except as specified in MCA 76-3-621(8)(a)(ii), first minor Subdivisions are exempt from park dedications.

B. Consideration – Standards

In approving, conditionally approving, or denying a Subdivision application, the Board of Commissioners shall consider subsection (A) above and whether the proposed Subdivision complies with:

1. These regulations, including but not limited to, the standards set forth in section VI [Design and Improvement Standards];
2. Applicable zoning regulations;
3. Other applicable regulations, including but not limited to, floodplain regulations and airport affected area regulations;
4. MSPA, including but not limited to the following affects:
  - a. Affect on agriculture, including but not limited to;
    - i. Affect on adjacent agricultural operations.
    - ii. Interference with the movement of livestock or farm machinery.
    - iii. Interference with agricultural production and facilities.
    - iv. Maintenance of fences.
    - v. Proliferation of weeds.
    - vi. Increased human activity and nuisance complaints.
    - vii. Harassment of livestock by pets.
    - viii. Restrictions on diversification of existing agricultural land uses.
    - ix. Affect on agricultural soils.
    - x. Restrictions on weed spraying, dust, livestock odors and noise which are incidental to agricultural operations.
    - xi. Affect of increased traffic resulting from the Subdivision on surrounding agricultural operations.
  - b. Affect on agricultural water user facilities, including but not limited to;

- i. Affect on water availability for agricultural water users.
    - iii. Affect on owner of water user facilities.
      - a. Access for maintenance
      - b. Liability and risk of accidents involving trespassers.
    - iii. Affects on facility users and potential conflicts with Subdivision residents.
      - e. Seeps, flooding, and washouts.
      - f. Obstructions and interference.
      - g. Unintended uses (recreation and landscaping).
      - h. Maintenance access.
    - iv. Affects to water right holders.
      - a. Clarify water rights and how they will be transferred or otherwise allocated.
  - c. Affect on local services, including but not limited to;
    - i. Affect on current and planned level of service capacity.
      - h. Sheriff.
      - i. Park County Volunteer Fire Departments.
      - j. Emergency Medical Services.
      - k. Road, bridges, culverts, and cattle guards.
      - l. Schools.
      - m. Solid Waste Facilities.
      - n. Water and Wastewater Facilities.
    - ii. Affect on cost of services.
      - d. Current and anticipated tax revenues.
      - e. Cost of services for the Subdivision.
      - f. Evaluate need for special or rural improvements districts.
    - iii. Affect on county roads.
      - b. Evaluate the need to accept new county roads.
  - d. Affect on the natural environment, including but not limited to;
    - i. Affect on air quality.
    - ii. Affect on groundwater quality and quantity.
    - iii. Affect on surface water features.
    - iv. Affect on wetlands.
    - v. Affect on residential ambient exterior light level.
    - vi. Affect on historic and prehistoric sites.

- e. Affect on wildlife, including but not limited to;
  - i. Affect of Subdivision location and access roads on wildlife habitat, including nesting sites, winter range, travel corridors (migration routes) and wetlands.
  - ii. Affect and potential of human-wildlife conflicts.
  - iii. Affect and potential of pet-wildlife conflicts; and
- f. Affect on wildlife habitat.
- g. Affect on public health and safety, including but not limited to;
  - i. Affect on traffic safety.
  - ii. Affect on emergency vehicles access and response time (sheriff, fire, and ambulance).
  - iii. Affect on groundwater quality due to the cumulative effect of septic systems and wells.
  - iv. Affect of exposure to natural or man-made hazards.
  - v. Affect of development on adjacent land uses.
- 5. Proposed mitigation in accordance with section IV-A-5[Applicant(s) preference for mitigation].
- 6. The Board of Commissioners may assess all or a portion of the costs of employing outside expertise necessary to properly review a proposed Subdivision to the Applicant(s).

C. Consideration-Evidence

In making its decision to approve, conditionally approve, or deny a proposed Subdivision, the Board of Commissioners may consider and weigh the following:

- 1. The Subdivision Plat Application, General Description and Information, and Preliminary Plat Form, Contents, and Supplements;
- 2. Environmental Assessment; including a Summary of Probable Affects, and a Community Affect Report;
- 4. Park County's growth policy;
- 5. Comments, evidence and discussions at the public hearing(s);
- 6. Subdivision Administrator's staff report and recommendations;
- 7. Planning Board recommendation; and
- 8. Any additional information authorized by law.



Notwithstanding the foregoing, the Board of Commissioners may not consider any information regarding the Subdivision application that is presented after the final public hearing (which may include a subsequent hearing if any) when making its decision to approve, conditionally approve, or deny the proposed Subdivision.

D. Water and Sanitation-Special Rules

1. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for approval, conditional approval or denial of a Subdivision only if the Board of Commissioners makes specific findings of fact justifying a determination.
2. For a proposed Subdivision that will create one or more parcels containing less than 20-acres, the Applicant(s) shall obtain approval by the DEQ as a condition of approval of the final plat. This approval applies to the development of Lots at the time of the approval and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the Lots are actually developed.
3. For a proposed Subdivision that will create one or more parcels containing 20-acres or more, the Applicant(s) shall demonstrate that there is an adequate water source and at least one area for a septic system and a replacement drain field for each Lot in order to obtain final plat approval. This demonstration to the Local Reviewing authority is to evaluate the ability to develop Lots at the platting stage and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the Lots are actually developed.
4. The Board of Commissioners shall collect and make public comments submitted regarding water and sanitation information or a summary of the comments submitted available to the Applicant(s) within 30 days after conditional approval or approval of the Subdivision application and preliminary plat.
5. The Applicant(s) shall, as part of the Applicant(s)' application for sanitation approval, forward the comments or the summary provided by the Board of Commissioners to the:
  - a. Reviewing Authority provided in Montana Code Annotated, Title 76, chapter 4, for Subdivisions that will create one or more parcels containing less than 20-acres; and
  - b. Local health department or board of health for proposed Subdivisions that will create one or more parcels containing 20 acres or more and less than 160-acres.

E. Documentation of Board of Commissioners Decision

1. In rendering its decision to approve, conditionally approve, or deny the proposed Subdivision, the Board of Commissioners shall issue written findings of fact that discuss and weigh the proposed Subdivision's compliance with this chapter.
2. When the Board of Commissioners approves, conditionally approves, or denies the proposed Subdivision, it shall send the Applicant(s) a letter, with the appropriate signature, and make the letter available to the public. The letter shall:
  - a. Contain information regarding the appeal process for the denial or imposition of conditions;
  - b. Identify the regulations and statutes that are used in reaching the decision to approve, conditionally approve or deny and explain how they apply to the decision;
  - c. Provide the facts and conclusions that the Board of Commissioners relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and
  - d. Provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.; and
  - e. Set forth the time limit for approval, pursuant to subsection (F) below.

F. Subdivision Application and Preliminary Plat Approval Period

1. Upon approval or conditional approval of the preliminary plat, the Board of Commissioners shall provide the Applicant(s) with a dated and signed statement of approval. The approval shall be in force for no more than three calendar years.
  - a. At least 30 working days prior to the expiration of the preliminary plat approval, the Board of Commissioners may, at its discretion and at the written request of the Applicant(s), extend its approval for a period of one additional year.
  - b. The Board of Commissioners may extend the approval for more than one year if a longer approval period is included as a specific condition of a written Subdivision Improvements Agreement

between the Board of Commissioners and the Applicant(s), provided for in Section II-B-4.

2. After the application and preliminary plat are approved, the Board of Commissioners may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires, at which time a new application shall be required.
3. The Board of Commissioners may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the Applicant(s), and upon which the approval or conditional approval was based, is inaccurate.

**IV-A-9. Amended Applications**

- A. If the Applicant(s) changes the Subdivision application or preliminary plat after the Subdivision Administrator makes a determination of sufficiency pursuant to section II-A-6[Review Process] but before the Planning Board hearing, the Applicant(s) shall submit the amended application to the Subdivision Administrator for review.
  1. Within 5 working days of receiving the amended application or preliminary plat, the Subdivision Administrator shall determine whether the changes to the Subdivision application or preliminary plat are material, pursuant to subsection (D) below.
  2. The 60-working day review period is suspended while the Subdivision Administrator considers whether the changes to the Subdivision application or preliminary plat are material.
  3. If the Subdivision Administrator determines the changes are not material, the 60-working day review period resumes when the Subdivision Administrator mails notice of the decision to the Applicant(s).
  4. If the Subdivision Administrator determines the changes are material, the Subdivision Administrator shall either require the Applicant(s) to schedule a new pre-application meeting and resubmit the application as a new Subdivision application or, after an additional 15 working day review period, proceed with the 60-working day review period upon certification from the Subdivision Administrator that the application is sufficient for review.
- B. If the Applicant(s) changes the Subdivision application or preliminary plat after the Planning Board hearing but before the Board of Commissioners hearing, the Applicant(s) shall submit the amended application or preliminary plat to the Subdivision Administrator for review.

1. Within five working days of receiving the amended application or preliminary plat, the Subdivision Administrator shall determine whether the changes to the Subdivision application or preliminary plat are material pursuant to subsection (D) below.
  2. The 60-working day review period is suspended while the Subdivision Administrator considers whether the changes to the Subdivision application or preliminary plat are material.
  3. If the Subdivision Administrator determines the changes are not material, the 60-working day review period resumes when the Subdivision Administrator mails notice of the decision to the Applicant(s).
  4. If the Subdivision Administrator determines the changes are material, the Subdivision Administrator shall either:
    - a. Require the Applicant(s) to begin the Subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee; or
    - b. Schedule a new Planning Board hearing to take comment on the amended application or preliminary plat. Notice of the Subdivision Administrator's determination to schedule a new Planning Board hearing shall be provided as set forth in section IV-A-3[Public Hearings and Notices – General]. A supplemental staff report shall be prepared to address the changes to the original application
  5. If a new Planning Board hearing is held pursuant to subsection (B)(4)(b) above, the 60-working day review period is suspended for the time period between notice of the Subdivision Administrator's determination and 10 working days after the date of the second Planning Board hearing.
- C. By making changes to a pending Subdivision application or preliminary plat, the Applicant(s) consents to suspension of the review period as provided in subsections (A)(2) and (B)(2).
- D. The following changes, although not a complete list, may be considered material:
1. Configuration or number of Lots;
  2. Road layout;
  3. Water and/or septic proposals;
  4. Configuration of park land or open spaces;

5. Easement provisions;
  6. Proposed Covenants; and
  7. Designated primary or Secondary Access.
- E. An Applicant(s) whose Subdivision application or preliminary plat has been deemed materially changed by the Subdivision Administrator may appeal the Subdivision Administrator's decision to the Board of Commissioners by written notice within 10 working days. The Applicant(s) may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.
1. The 60-working day review period is suspended until the Board of Commissioners decision on the appeal is made.
  2. If the Board of Commissioners concludes that the evidence and information demonstrate that the changes to the Subdivision application or preliminary plat are material, the Board of Commissioners shall determine whether the Subdivision application should be resubmitted or scheduled for rehearing in front of the Planning Board pursuant to subsection (B)(4)(a) or (b).
  3. If the Board of Commissioners concludes that the evidence and information demonstrate that the changes to the Subdivision application or preliminary plat are *not* material, the 60-working day review period resumes as of the date of the decision.
  4. By appealing the decision of the Subdivision Administrator, the Applicant(s) agrees to suspension of the 60-working day review period provided in paragraph (1) above.

#### **IV-B. Major Final Plats**

The final plat must have the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in section II-B,[Final Plats].

## **V. DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW**

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### **V-A. Purpose**

MSPA provides that certain divisions of land, which would otherwise constitute Subdivisions, are exempt from local Subdivision review and approval, unless the Board determines the use of the exemption is an attempt to evade the MSPA. The exemptions are found in Part 2 of Title 76, Chapter 3 MCA. These regulations address the more commonly used exemptions.

### **V-B. General Criteria to Determine Whether a Proposal is an Attempt to Evade MSPA**

The Board of Commissioners and its agents, when determining whether an exemption is claimed for the purpose of evading MSPA, shall consider all of the surrounding circumstances. These circumstances include the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed, and any pattern of exempt transactions that will result in the equivalent of a Subdivision without local government review.

### **V-C. Divisions of Land Exempt from the Requirements of These Regulations and the Montana Subdivision and Platting Act [Section 76-3-201, MCA]**

The Board of Commissioners will examine the divisions of land set forth in this section to determine whether or not the requirements of MSPA and these regulations apply to the division. The fee for this examination is set forth in Park County Resolution No. 874. The requirements of these regulations and MSPA do not apply unless the method of disposition is adopted for the purpose of evading these regulations or the MSPA, or as otherwise specifically provided, when:

- A. A division of land is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in the state pursuant to the law of eminent domain, Title 70, Chapter 30. Before a court of record orders a division of land, the court shall notify the Board of Commissioners of the pending division and allow the Board of Commissioners to present written comments on the Subdivision.
- B. A division of land is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes.
  1. This Exemption Applies:
    - a. To a division of land of any size;

- b. If the land that is divided is only conveyed to the financial or lending institution to which the mortgage, lien, or trust indenture was given, or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the divided land, by the owner of the property at the time the land was divided, to any party other than those identified in the preceding sentence subjects the division of land to the requirements of MSPA and these regulations;
- c. To a parcel that is created to provide security under this paragraph. The original tract, minus the exempted tract, of the tract of land, if applicable, is subject to the provisions of MSPA and these regulations.

2. Statement of Intent

Under policies by many lending institutions and federal home loan guaranty programs, a landowner who is buying a tract with financing or through a contract for deed is required to hold title to the specific site on which the residence will be built. The intended purpose of this exemption is to allow a person who is buying a tract using financing or contract for deed to segregate a smaller parcel from the tract for security for financing construction of a home on the property.

3. Use of Exemption

This exemption is not available to simply create a parcel without review by claiming that the parcel will be used for security to finance construction of a home or other structure on the proposed Lot.

This exemption may not be properly invoked unless (1) the claimant is purchasing a larger tract through financing or a contract for deed (and thus does not hold title) and (2) a lending institution requires the landowner to hold title to a small parcel of the tract because the smaller tract is required as security for a building construction loan.

4. Required Materials

When this exemption is to be used, the landowner must submit to the Subdivision Administrator:

- a. A statement of how many interests within the original tract will be created by use of the exemption;

- b. The deed, trust indenture or mortgage for the exempted interest (which states that the interest is being created only to secure a construction mortgage, lien or trust indenture);
- c. A statement explaining who will have title to and possession of the balance of the original parcel after title to the exempted interest is conveyed; and
- d. A signed statement from a lending institution that the creation of the interest is necessary to secure a loan.

5. Rebuttable Presumptions

The use of this exemption is presumed to have been adopted for the purpose of evading the Act if:

- a. It will create more than one new building site;
  - b. The financing is not for construction or improvements on the exempted parcel, or for re-financing;
  - c. The person named in the “statement explaining who would have possession of the original tract, minus the exempted tract, ~~parcel~~ if title to the exempted parcel is conveyed” is anyone other than the borrower of funds for construction;
  - d. Title to the exempted interest will not be initially obtained by the lending institution if foreclosure occurs;
  - e. There exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract;
  - f. It appears that the principal reason the interest is being created is to create a building site and using the interest to secure a loan is a secondary purpose; or
  - g. The division of land is created for the purpose of conveyance to any entity other than the financial or lending institution to which the mortgage, lien or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien or trust indenture.
- C. A division of land creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;
- D. A division of land creates cemetery Lots;



- E. A division of land is created by the reservation of a life estate;
- F. A division of land is created by lease or rental for farming and agricultural purposes;
- G. A division of land is in a location over which the state does not have jurisdiction; or,
- H. A division of land is created for public rights-of-way or public utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of the MSPA and these regulations.

**V-D. Divisions of Land Which May be Exempt from Review and Surveying**

- A. Generally condominiums are subject to review as Subdivisions, but under certain circumstances they may be exempt from review, provided they are constructed on land subdivided in compliance with these regulations and ~~the~~ MSPA; and:
  - 1. The approval of the original Subdivision of land expressly contemplated the construction of the condominiums and Section 76-3-621, MCA, is complied with; or
  - 2. The condominium proposal is in conformance with applicable zoning regulations when local zoning regulations are in effect.
- B. Generally, Subdivisions created by rent or lease are exempt from the surveying and filing requirements of MSPA and these regulations, but must be submitted for review and approved by the Board of Commissioners before portions may be rented or leased.
  - 1. When the land upon which an improvement is situated has been subdivided in compliance with the MSPA, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to MSPA or these regulations [Section 76-3-202, MCA].
  - 2. The sale, rent, lease or other conveyance of one or more parts of a building, structure or other improvement, whether existing or proposed, is not a division of land and is not subject to the requirements of MSPA or these regulations [Section 76-3-204, MCA].
- C. A division of land created by lease or rental of contiguous airport related land owned by a city, county, the state, or a municipal or regional airport authority is not subject to MSPA or these regulations, provided the lease or rental is for onsite

weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier related activities.

- D. A division of state-owned land is not subject to MSPA or these regulations unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.
- E. MSPA and these regulations do not apply to deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1974.
- F. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with section 60-2-209, MCA, and are exempted from the surveying and platting requirements of MSPA and these regulations. A survey or plat for the recordation of an instrument transferring title to a remainder that was created when the state obtained property for a highway right-of-way is not required. [44 A.G. Op. 25 (1992)]. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

**V-E. Divisions of Land Exempt from Review but Subject to Survey Requirements and Zoning Regulations**

Unless the method of disposition is adopted for the purpose of evading these regulations or the MSPA, the following divisions or aggregations of land are not Subdivisions under these regulations and the MSPA, but are subject to the surveying requirements of Section 76-3-401, MCA, and zoning regulations adopted under Title 76 Chapters 2 or 3. A division or aggregation of land may not be made under this section unless the County Treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid. The Clerk and Recorder's office shall notify the Subdivision Administrator if a land division or aggregation described in this section or Section 76-3-207(1), MCA, is submitted to the Clerk and Recorder's Office prior to the survey being submitted to the Subdivision Administrator for review.

**V-E-1. Relocation of Common Boundary [Section 76-3-207(1)(a), MCA]**

A. Statement of Intent

The intended purpose of this exemption is to allow a change in the location or the elimination of a boundary line between adjoining properties outside of a platted Subdivision and to allow a one-time transfer of a tract to effect that relocation or elimination without Subdivision review. Boundary relocations cannot be used for the purpose of evading the MSPA and these regulations.

B. Required Information

1. Certificates of Survey claiming this exemption must clearly distinguish between the existing boundary location and, in case of a relocation, the new boundary. This must be accomplished by representing the existing boundary with a dashed line and the new boundary, if applicable, with a solid line. The appropriate certification set forth in ARM 24.183.1104 (1)(f) [Appendix A] must be included on the Certificate of Survey. Certificates of Survey showing the relocation of common boundary lines must be accompanied by a quit claim or warranty deed or recordable agreement from adjoining property owners for the entire newly described parcel(s) or that portion of the tract(s) that is being affected.

C. Use of Exemption

The proper use of the exemption for relocating common boundary lines is to establish a new boundary between adjoining parcels of land outside of a platted Subdivision, without creating an additional parcel. The exemption may not be used if the division of land would result in the permanent creation of one or more additional parcels of land, or if the exemption is used for the purpose of evading MSPA and these regulations.

D. Rebuttable Presumptions

The use of this exemption is presumed to have been adopted for the purpose of evading MSPA if:

1. The reviewing agent determines that the documentation submitted according to this section does not support the stated reason for relocation;
2. The information provided by the applicant(s) or surrounding circumstances indicates the relocation of common boundaries is being used to evade the MSPA and these regulations; or
3. The proposed relocation creates a parcel of less than 160 acres which, prior to the relocation included more than 160 acres.

**V-E-2. A Gift or Sale to a Member of the Immediate Family [Section 76-3-207(1)(b), MCA]**

A. Statement of Intent

The intent of this exemption is to allow a landowner to convey one parcel outside of a platted Subdivision to each member of his or her Immediate Family Member, without local Subdivision review. The use of this exemption may not create more than one parcel *per* Immediate Family Member.

The term “Immediate Family Member” means the spouse, children by blood or adoption, or parents of the grantor [Section 76-3-108(8), MCA]. Only grantors who are natural persons may use this exemption.

Immediate Family Members shall not sell the transferred parcels, including, the non-transferred portion of the original parcel for three years after the transfer unless such parcels are subject to an involuntary transfer such as by foreclosure, death, judicial sale, condemnation, or bankruptcy.

B. Required Information

A Certificate of Survey (or recording of an instrument of conveyance) that uses this exemption to create a parcel for conveyance to a immediate Family Member must show the name of the grantee, relationship to the Landowner, and the parcel to be conveyed under this exemption, and the Landowner’s certification of compliance [ARM 24.183.1104(1)(f)] found in Appendix A. Also, the Certificate of Survey or instrument of conveyance must be accompanied by a deed or other conveying document.

C. Use of Exemption

One conveyance of a parcel to each member of the Landowner’s Immediate Family is eligible for exemption from Subdivision review under the MSPA and these regulations. However, the use of the exemption may not create more than one new parcel per Immediate Family Member.

D. Rebuttable Presumptions- The use of this exemption is presumed to have been adopted for the purpose of evading MSPA if:

1. Any proposed use of the family gift or sale exemption to divide a tract that was previously created with the use of an exemption will be presumed to have been adopted for purposes of evading (MSPA):
2. The use of the family gift or sale exemption to divide parcels that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or promotional plan raises a rebuttable presumption that the use of the exemption is adopted for purposes of evading MSPA; or
3. A transfer of a Lot by one Immediate Family Member to another, by deed, followed by an attempted use of this exemption will result in the presumption the method of disposition was adopted for the purpose of evading MSPA and these regulations.

F. Claim Procedure:

To prevent the abuses of the family transfer exemption, claims will be evaluated as follows:

1. Applicant submits complete application to Community Development office;
2. Community Development Office reviews application materials for completeness and appropriateness of exemption;
3. The application is then sent to the County Environmental Health Department, County Clerk and Recorder's Office, and County Attorney for review and comment;
4. The Community Development Office prepares staff report and schedules consideration of exemption claim with County Commission. The exemption claim is placed on Board's regular agenda;
5. A staff member of the Planning Office presents a summary of the proposed division of land and any questions about the claimant's potential intent to evade Subdivision review;
6. Board reviews all applicable information, including the exemption application and all affidavits stating that the claimant(s):
  - a. Have not received another parcel in Park County as a result of a family transfer;
  - b. That no parcel(s), including any non-transferred portions of the original parcel, will not be sold for a period of three years from the date of the approval; and
  - c. That this transfer is not for the purpose of circumventing Subdivision regulations and MSPA.
7. The Board may ask questions about all relevant circumstances, aimed at determining whether the exemption claim is an attempt to evade Subdivision review;
8. The Board evaluates whether the claim is an appropriate exemption or an attempt to evade the MSPA or these *Regulations*. In assessing the claimant's purpose the Board will evaluate all relevant circumstances including the nature of the claimants business, the prior history of the particular parcel in question and the proposed configuration of parcels if the exempt transaction(s) are completed;

9. The claimant has the burden of proof in satisfying the Board that the exemption claim is appropriate;
10. If approved, the Board Chair signs the survey (or additional documents) confirming the Board's approval of the exemption, then returns the documents to the Community Development Office;
11. If denied, the claimant within 15 days of the original hearing described above, may request reconsideration in writing to present additional information or argument; and
12. At such time as a request may be approved, claimant picks up signed documents from the Community Development Office, and then records documents with Clerk and Recorder's Office.

F. Penalties:

Except for involuntary transfers permitted above, the transfer or sale of the gifted parcel created by the family transfer exemption within three years of creation of the parcel will result in the presumption that the exemption was used for the purpose of evading MSPA and the *these Regulations*. The recordation of the instrument of conveyance of a parcel created by such family transfer within three years of creation is subject to refusal of the Clerk and Recorder's Office, or the filing of a court action to set aside the land transfer.

**V-E-3. Divisions of Land Proposed for Agricultural Use Only [Section 76-3-207(1)(c), MCA]**

A. Statement of Intent

This exemption is intended to allow a landowner to create a parcel for gift, sale, or agreement to buy and sell, outside a platted Subdivision, without local review if the parcel will be used only for the production of livestock or agricultural crops and no residential, commercial or industrial buildings, which require water or sewer, will be built on it.

B. Required Information

A Certificate of Survey that uses this exemption to create a parcel for agricultural use only requires a covenant running with the land in accordance with Section 76-3-207(1)(c), MCA, and a signed and acknowledged recitation of the covenant on the face of the survey. [ARM 24.183.1104(f) (iii) in Appendix A] The Certificate of Survey must be accompanied by a separate, recordable, document reciting the covenant.

C. Use of Exemption.

1. "Agricultural purpose," for purposes of these evasion criteria, means the use of land for raising crops, livestock, or timber, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the DEQ, provided the applicable exemption under the Sanitation in Subdivisions Act is properly invoked by the property owner.
2. Any change in use of the land for anything other than agricultural purposes subjects the agricultural parcel for review as a Minor Subdivision, unless the agricultural parcel is aggregated back into the original parcel.
3. Residential, commercial, or industrial structures, including facilities for commercial processing of agricultural products, may not be utilized, constructed or erected on parcels created under this exemption unless the agricultural parcel is aggregated back into the original parcel and the covenant is revoked and the proposed use in compliance with all other applicable regulations.

D. Rebuttable Presumptions.

The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purpose of evading MSPA:

1. The parties to the transaction must enter into a covenant running with the land and revocable only by mutual consent of the Board of Commissioners and the property owner that the divided land will be used exclusively for agricultural purposes. The covenant must be signed by the property owners, including any potential buyers of the property, and the members of the Board of Commissioners;
2. The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial, or industrial buildings have been or will be built on it; and
3. The parcel must meet the criteria for an agricultural designation under Section 15-7-202, MCA.

**V-E-4. Relocation of Common Boundaries Involving Platted Subdivisions**  
**[Section 76-3-207 (1)(d), (e) and (2)(a), MCA]**

A. Statement of Intent

1. MSPA allows certain revisions to Subdivisions platted since July 1, 1973, which include relocation of common boundaries for five or fewer Lots within a platted Subdivision or the relocation of a common boundary between a single Lot in a platted Subdivision and adjoining land outside a platted Subdivision (but a restriction or requirement on either continues to apply), without review.
2. If a change is made to a platted Subdivision which cumulatively results in an increase in the number of Lots or redesigns or rearranges six or more Lots, the Board of Commissioners must review and approve the amended plat before an amended plat may be filed with the clerk and recorder.

B. Use of Exemption

1. Relocation of a common boundary between a single Lot in a platted Subdivision and adjoining land outside a platted Subdivision [Section 76-3-207(1)(e), MCA] is allowed, because no additional parcels are created. Subdivision review is not necessary because the relocation does not create any additional division of land, unless however, the proposed relocation materially changes any portion of the approved Subdivision as may be identified under sections II-B-5, III-A-7, II-A-9
2. The cumulative relocation of common boundaries of Lots for five or fewer Lots within a platted Subdivision do not require subdivision review, as long as no additional Lots are created and the relocation does not materially change any portion of the approved Subdivision as may be identified under Sections II-B-5, III-A-7, II-A-9.
3. Aggregation of parcels or Lots when a Certificate of Survey or Subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established does not require Subdivision review. A restriction or requirement on the original platted Lot or original unplatted parcel continues to apply to those areas.

C. Rebuttable presumption

1. If the resulting Lots are inconsistent with the approved Subdivision and the uses in it, the use of the exemption will be presumed to have been adopted for the purpose of evading MSPA.



2. If the resulting Lots do not comply with existing zoning, Covenants, and/or deed restrictions, the use of the exemption will be presumed to have been adopted for the purpose of evading MSPA.

D. Fees

The Board of County Commissioners may examine a division or aggregation of land to determine whether or not the requirements of this chapter apply to the division or aggregation and may establish reasonable fees, not to exceed \$200, for the examination."

**V-F. Procedures and Review of Subdivision Exemptions**

**V-F-1. Submittal**

Any person seeking exemption from the requirements of MSPA shall submit to the Subdivision Administrator (1) a Certificate of Survey or, if a survey is not required, an instrument of conveyance, and (2) evidence of, and an affidavit affirming, entitlement to the claimed exemption. For purposes of Section 76-3-207, MCA, when a parcel of land for which an exemption from Subdivision review is claimed is being conveyed under a contract-for-deed, the terms "property owner," "landowner," and "owner" mean the seller of the parcel under the contract-for-deed (ARM 24.183.1104).

**V-F-2. Review**

When a division of land for which an exemption is claimed is submitted to the Subdivision Administrator, the Subdivision Administrator shall cause the documents to be reviewed by the designated agents of the Board of Commissioners (e.g., county or civil attorney's office, sanitarian, treasurer, and clerk and recorder's office). The Subdivision Administrator and Board of Commissioners agents shall review the claimed exemption to verify that it is the proper use of the claimed exemption and complies with the requirements set forth in MSPA, the Montana Sanitation in Subdivisions Act, and these regulations.

- A. Landowners or their agents are encouraged to meet with the Subdivision Administrator to discuss whether a proposed land division or use of an exemption is in compliance with the criteria in this Section V.
- B. The Subdivision Administrator shall make a written determination of whether the use of the exemption is intended to evade the purposes of, MSPA or these regulations, explaining the reasons for the determination.
- C. If the Subdivision Administrator finds that the proposed use of the exemption complies with the statutes and the criteria set forth in this section, the Subdivision Administrator shall notify the Board of Commissioners and advise the Clerk and Recorder's to file the Certificate of Survey or record the instrument of conveyance and accompanying documents. If the Subdivision Administrator finds

that the proposed use of the exemption does not comply with the statutes and the criteria in Chapter V, the Subdivision Administrator shall advise the Clerk and Recorder's Office not to file or record the documents, and the materials will be returned to the landowner.

- D. The Subdivision Administrator shall consider all of the surrounding circumstances when determining whether an exemption is claimed for the purpose of evading MSPA and /or these regulations. These circumstances may include but are not limited to: the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed, and any pattern of exempt transactions that will result in the equivalent of a Subdivision without local government review.

**V-F-3. Appeals**

- A. Any claimant whose proposed use of an exemption has been denied by the Community Development Department, Health Department, or County Attorney's Office because the proposed division of land is not in compliance with these regulations or has been deemed an attempt to evade MSPA and/or these regulations may appeal the decision to the Board of Commissioners by submitting a written request to the Community Development Department. The Community Development Department will schedule a public meeting before the Board of Commissioners and will notify the claimant of the date and time of the scheduled meeting.
- B. The claimant may submit additional evidence to show that the use of the exemption in question is not intended to evade MSPA or these regulations, and, thereby rebut a presumption.
- C. If the Board of Commissioners concludes that the evidence and information overcome the presumption that the exemption is being invoked to evade ~~the~~ MSPA and/or these regulations, it may authorize the use of the exemption in writing. A Certificate of Survey claiming an exemption from Subdivision review, which otherwise is in proper form, and which the Board of Commissioners has found not to be an attempt to evade MSPA or these regulations, may be filed (or an instrument of conveyance recorded) if it is accompanied by written authorization of the Board of Commissioners.
- D. If the claimant proposing to use an exemption chooses not to rebut a presumption when the Community Department, Health Department, or County Attorney's Office deems the use of the exemption an attempt to evade MSPA and/or these regulations, or if the Board of Commissioners determines that the proposed use of an exemption was for the purpose of evading the MSPA and/or these regulations, the exemption application will become null and void.

### **V-G. Remaining Parcels of Land**

Occasionally parcels of land are created after the rest of the land has been subdivided or after an exemption is used to divide the land. The term “remainder” has been used to refer to that portion of an original tract which is not itself created for transfer but which is left after other parcels are segregated for transfer. The only parcel(s) that will not be reviewed as part of a subdivision or exemption are parcels 160-acres in size or greater.

A “remainder” less than 160 acres in size, contiguous to a proposed Subdivision or exemption, will be considered a parcel and will not evade review as a “remainder.”

### **V-H. Identification Codes**

To assist in the implementation of this review process and to monitor those parcels by exemption the Clerk and Recorder’s Office may cause the following identification codes to be added to the numbering of recorded certificates of survey filed after the effective date of these regulations.

- CO ... Court Order [Section 76-3-201(1)(a), MCA]
- ME ... Mortgage Exemption [Section 76-3-201(1)(b), MCA]
- LE ... Life Estate [Section 76-3-201(1)(e), MCA]
- RB ... Relocation of Common Boundary [Section 76-3-207(1)(a), MCA]
- FC ... Family Conveyance [Section 76-3-207(1)(b), MCA]
- AE ... Agricultural Exemption [Section 76-3-207(1)(c), MCA]
- OS ... Occasional Sale (used prior to April 6, 1993)
- AL ... Aggregation of Lots [Section 76-3-207(e), MCA]

## **VI. DESIGN AND IMPROVEMENT STANDARDS**

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All Subdivisions approved by the Board of Commissioners must comply with the provisions of this chapter, except where granted a variance pursuant to section XI-B, [Variances]. The Board of Commissioners may not grant variances from the provisions of section VI-D, [Floodplain Provisions]. For Subdivisions created by rent or lease, planned unit developments, and condominiums, refer to chapters VII, VIII, and IX of these regulations.

### **VI-A. Conformance with Regulations**

The design and development of a Subdivision must conform with any applicable zoning or other regulations.

### **VI-B. Natural Environment**

- A. The design and development of Subdivisions must provide satisfactory building sites, which are properly related to topography, and should, to the extent possible, preserve the natural terrain, natural drainage, existing topsoil, trees and other existing vegetation (See Chapter 3.3, Park County Growth Policy).
- B. Revegetation: All vegetation disturbed during construction shall be reestablished by reseedling with vegetation types that have been recommended by the Natural Resource Conservation Service or the MSU Extension Office and approved by the Community Development Office.

### **VI-C. Lands Unsuitable for Subdivision**

- A. Lands that the Board of Commissioners determines is unsuitable for Subdivision because of natural or human caused hazards are;
  - 1. flooding;
  - 2. swelling soils;
  - 3. snow avalanches;
  - 4. rock falls;
  - 5. land slides;
  - 6. steep slopes in excess of 25% grade;
  - 7. subsidence;
  - 8. high water table;
  - 9. polluted or non-potable water supply;
  - 10. high voltage lines;
  - 11. high pressure gas lines;
  - 12. air or vehicular traffic hazards or congestion;
  - 13. because of unreasonable burdens on the general public such as requirements for the excessive expenditure of public funds;
  - 14. environmental degradation;

15. or other features which may be detrimental to the health, safety, or general welfare of existing or future residents;

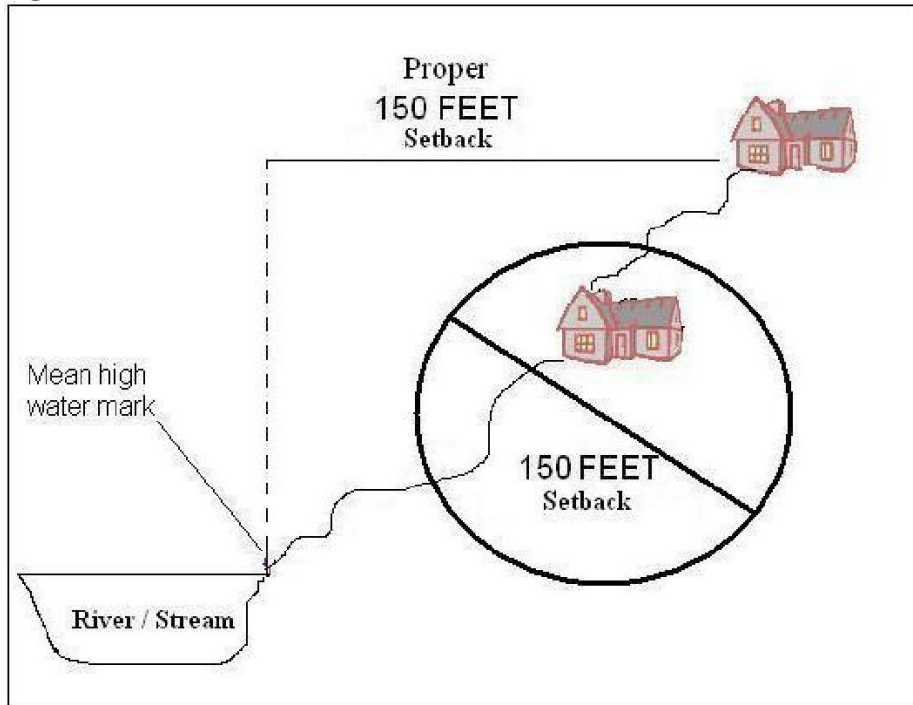
These lands may not be Subdivided for building or residential purposes unless the hazards are eliminated or will be overcome by design and construction techniques approved by the Board of Commissioners. [Subdivisions on land located in the wildland-urban interface as may be identified by the United States Forest Service (USFS), the Montana Department of Natural Resources and Conservation, a local Fire Protection Authority (FPA), a local Growth Policy, or a Community Wildfire Protection Plan (CWPP) are prohibited unless the Applicant(s) proposes construction techniques or other mitigation measures that will protect structures and persons in that area. These regulations do not require building regulations, but the proposed construction techniques or other mitigation measures must be approved by the fire protection authority.

#### **VI-D. Floodplain Provisions**

- A. Land located in the floodway of a 100-year flood event as defined by Title 76, Chapter 5, MCA, or other land determined by the Board of Commissioners to be subject to flooding may not be Subdivided for building or residential purposes or other uses that may increase or aggravate flood hazards to life, health or welfare, or that may be prohibited by state or local floodplain or floodway regulations.
- B. Construction Setbacks from Water Bodies: The river frontage property in Park County is among the most desirable for new development. It is also recognized that the frontage is of major ecological importance for wildlife habitat and protection of water quality.
  1. The minimum construction setback from the Yellowstone, Shields, and Boulder Rivers shall be 150 feet from the mean high water mark or outside the 100-year floodplain, whichever is greater. The minimum construction setback from all other perennial rivers and lakes shall be 100 feet or outside the 100-year floodplain, whichever is greater.
    - a. The following *Figure 1* illustrates the proper setback from the mean high water mark;

*\*continued on next page\**

**Figure 1**



2. The minimum construction setback may be increased in order to protect riparian areas, wetlands, trout spawning areas, critical wildlife habitat, fragile areas, or important historical or archeological sites.
  3. Factors that may be considered a basis for increasing the 150 foot construction setback in new Subdivisions are;
    - a. The width of the riparian area;
    - b. The location of critical wildlife habitat on the land proposed for Subdivision;
    - c. Protection of riverbank stability, trees, water quality and trout spawning areas;
    - d. The location of an important historic or prehistoric site on the property;
    - e. The 100-year floodplain; and
    - f. Protection of open space and/or viewsheds.
- C. Prior to recommending an increase in the minimum setback, the ~~Park County~~ Planning Office, Park County Planning Board, and Board of Commissioners shall consult with the appropriate agencies, including but not limited to:
1. Montana Fish Wildlife and Parks;
  2. Environmental Protection Agency (EPA);
  3. U.S. Fish and Wildlife Services;
  4. U.S. Forest Service;

5. Park County Conservation District; or
  6. State Historic Preservation Office.
- D. If any portion of a proposed Subdivision is within 2,000 horizontal feet and 20 vertical feet of a live watercourse draining an area of 25 square miles or more, and no official floodway delineation or floodway studies of the river have been made, the Applicant(s) shall provide in detail to the floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation, a flood hazard evaluation, including the calculated 100 year frequency water surface elevations and/or 100 year floodplain boundaries. This detailed evaluation must be performed by a licensed professional engineer experienced in this field of work. After the floodplain Management Section of the Water Resources Division has prepared a report delineating the floodway, the Applicant(s) must submit it to the Community Development Department (or Subdivision Administrator) along with the Environmental Assessment required for the preliminary plat.
- E. Each subdivided parcel with an individual water and sewer system shall contain at least one acre of buildable land outside the floodplain portion of a delineated 100 year floodplain as defined by the Park County Floodplain Regulations and Title 76, Chapter 5, MCA. The floodway will be determined by the official Park County Floodplain Maps. For rivers where the floodway portion of a delineated floodplain have not been identified (e.g. the Yellowstone River) the Applicant(s) shall furnish survey data as required by the Montana Requirements for Flood Hazard Evaluations (ARM 8.94.2601) for use in delineating the floodway portion of the 100 year floodplain with the preliminary plat.
- F. The above requirement is waived if the Applicant(s) contacts the Water Resources Division and that agency states in writing that available data indicate that the proposed Subdivision is not in a flood hazard area.
- G. Subdivision of Land within a 100-year Delineated Floodplain: Where the 100-year floodplain has been delineated and mapped in a state or federally approved study, or a flood hazard area has been identified, the following standards shall apply to all proposed Subdivisions:
1. New Subdivision roads, bridges, and utilities shall not be located within the 100 year floodplain. Variances shall be considered in accordance with section XI-B of these regulations when unusual topographical conditions exist or construction of roads and bridges are necessary to ensure public health and safety.
  2. A minimum of one acre of any Subdivision Lot shall not be located within the 100 year floodplain.;

3. Lots with any area proposed to be within the 100-year floodplain shall designate a building Lot on the plat that is outside of the 100-year floodplain; and
  4. Land within the 100-year floodplain may be used for open space, wildlife habitat, recreation, trail systems, and parks if the use does not aggravate flood hazards or degrade riparian vegetation or habitat. This determination it to be determined by Montana Fish, Wildlife, and Parks.
- H. Flood Hazard Evaluation Required: If any portion of a proposed Subdivision is within 2,000 horizontal feet and 20 vertical feet of a perennial river draining an area of 25 square miles or more, and no official floodway delineation or floodway studies of the river have been made, the Applicant(s) must furnish survey data to the Floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation. After the Floodplain Management Section of the Water Resources Division has prepared a report delineating the floodway, the Applicant(s) must submit it to the Planning Office along with the Environmental Assessment required for the preliminary plat. The County Commission may waive the flood hazard evaluation requirement where the Applicant(s) contacts the Water Resources Division, DNRC, and that agency states in writing that data indicates that the proposed Subdivision is not in the flood hazard area as defined in this Section. In considering a waiver the Board shall consult with the Park County Floodplain Administrator.

**VI-E. Improvement Design**

Engineering and survey plans, specifications, and reports required in connection with Public Improvements and other elements of the Subdivision required by the Board of Commissioners must be prepared by a professional engineer or a Professional Land Surveyor as their respective licensing laws allow in accordance with the MSPA and these regulations.

**VI-F. Lots**

Each Lot must contain a satisfactory building site and conform to health department regulations, applicable zoning regulations and these regulations.

1. No Lot may be divided by a municipal or county boundary line.
2. No Lot may be divided by a public road, alley or utility right-of-way or easement.
3. Alleys may not be used to provide the primary access to a Lot.



4. Corner Lots must have driveway access to the same street or road that provides access to interior Lots.
5. Corner Lots must be designed to provide acceptable sight distances for safe vehicular movement.
6. No Lot may have an average depth greater than three times its average width.
7. Side Lot lines must be at substantially right angles to street or road lines and radial to curved street or road lines.
8. Through Lots are prohibited except when they are essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography or orientation.

**VI-G. Blocks**

1. Blocks must be designed to assure traffic safety and ease of traffic control and circulation, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography.
2. Unless impractical, block length must not be more than 1200 feet.
3. Blocks must be wide enough to allow for two tiers of Lots unless a narrower configuration is essential to provide separation of residential development from traffic arteries, or to overcome specific disadvantages of topography and orientation, or unless the Board of Commissioners approves a design consisting of irregularly shaped blocks indented by cul-de-sacs.
4. Rights-Of-Way for adequate and safe pedestrian access, at least 10 feet wide, must be provided where deemed essential to provide circulation to schools, playgrounds, shopping, transportation, and other community facilities.

**VI-H. Streets and Roads**

**A. Design**

1. The arrangement, type, extent, width, grade, and location of all streets or roads must be considered in their relation to existing and planned streets or roads, topographical conditions, public convenience and safety, and the proposed uses of the land to be served by them.
2. Streets or roads must meet the design specifications in Table 1.

3. Where streets or roads terminate, either a cul-de-sac or “T” turnaround must be provided at the terminus. Cul-de-sacs and “T” turnarounds must conform to the design specifications in Table 1.
4. Residential driveways shall not have direct access to highways. Any vehicular access onto a state highway for non-residential subdivisions must be approved by the Montana Department of Transportation.
5. Whenever a Subdivision abuts or contains an existing or proposed highway, arterial, or collector street or road, the Board of Commissioners may require frontage roads or other treatment as may be necessary to adequately protect residential properties and to separate arterial and local traffic.
6. Half streets or roads are prohibited except when they are essential to the development of the Subdivision and when the Board of Commissioners is satisfied that the other half of the street or road will be dedicated to the public when the adjoining property is subdivided. When an existing half street or road is adjacent to a tract to be subdivided, the other half of the street or road must be platted within the new Subdivision.
7. The alignment of all streets and roads must provide adequate sight distances.
8. Intersections; The following requirements apply to intersections:
  - a. Streets or roads must intersect at 90 degree angles except when topography prohibits this alignment. In no case may the angle of an intersection be less than 60 degrees to the center line of the roadway being intersected;
  - b. Two streets or roads meeting a third street or road from opposite sides must be offset at least 125 feet for local roads and 300 feet for arterials or collectors;
  - c. No more than two streets or roads may intersect at one point;
  - d. Intersections of local streets or roads with major arterials or highways are prohibited;
  - e. Intersections must be designed to provide adequate visibility for traffic safety based on the designed operating speeds of the intersecting roadways;
  - f. Hilltop intersections are prohibited, unless no alternatives exist. Intersections on local roads within 100 feet of a hilltop are



the Applicant(s) shall provide Rights-Of-Way so as to allow suitable access to the un-subdivided Land (See Chapter 3.8, T 2.2, Park County Growth Policy).

This requirement may be waived by the Board when the Subdivision Administrator finds that one of the following criteria is met:

1. Topography or other physical conditions would make it impracticable to provide access to adjacent un-subdivided land;
2. Adequate public access is otherwise available to the adjacent un-subdivided land; and
3. When the adjoining un-subdivided land is under public ownership

This requirement shall be waived by the Board if the adjoining un-subdivided land is subject to a conservation easement or other legally restrictive covenant as confirmed by the County Attorney's Office.

- C. **Relation to Subdivided Areas:** The Applicant(s) shall arrange the roads to provide for the continuation of roads between adjacent subdivided properties (lands or parcels created by a recorded Subdivision plat) when such continuation is necessary for the convenient movement of traffic, connection of neighborhoods, effective provision of emergency services, and provisions of utilities.
- D. **Bikeways:** Bikeways should be considered in the planning of a Subdivision. Bikeways should be built to the minimum standards given in the American Association of State Highway & Transportation Officials (AASHTO) Guide for the Provision of Bicycle Facilities.
- E. **Secondary Access:** To facilitate traffic, the provisions of emergency services, and the placement of utility easements, all Subdivisions with (6) six or more Lots or subsequent Minor Subdivisions if deemed necessary under section VI-Q or Appendix B, shall provide a second means of access. A Secondary Access may be required for Minor Subdivisions if the maximum cul-de-sac length standard is exceeded or if topography or physical conditions so warrant.
- F. **Improvements**
1. **Roads and Streets**
    - a. Where applicable, all roadway improvements including pavement, curbs, gutters, sidewalks, and drainage must be constructed in accordance with the specifications and standards prescribed in these regulations or using materials approved by the Board of Commissioners.

- b. Roadway subgrades must be free of topsoil, sod, vegetation or organic matter, soft clay, and other substandard materials. Subgrades must be properly rolled, shaped, and compacted, and must be approved by the Board of Commissioners.
- c. Streets and roads must be designed to ensure proper drainage. This may require surface crowning, culverts, curbs and gutters, drainage swales and/or storm drains.
  - i. Cut and fill slopes shall be laid back to a 3:1 (Run:Rise) angle of repose to prevent erosion.
- d. Where access from a Public Road to the Subdivision will cross properties not owned by the Applicant(s), the Applicant(s) must obtain proper easements that meet the definition of access and be of sufficient width to satisfy the requirements of Table 1.
  - i. Easements must be granted by each property owner in a signed and notarized document (See Chapter 3.8, T 2.1, Park County Growth Policy).
  - ii. The location of any road easement must be shown on the plat or on a supplemental map. The existence of easements must be noted on the face of the final plat and on any deeds or other instruments conveying Lots within the Subdivision.
- e. Existing trees and other vegetation must be preserved whenever appropriate. Plantings may be required for buffering, screening, or prevention of soil erosion and are subject to approval by the Board of Commissioners.
- f. Street lights will be required in Subdivisions proposed within or adjacent to areas with existing street lighting. Street lighting may be required in other areas when necessary to protect public safety.
- g. All lighting in a Subdivision, including street lights, shall be downward facing lighting.
- h. Street or road signs and traffic control devices of the size, shape, and height approved by the Board of Commissioners must be placed at all intersections. Traffic control devices must conform to the standards contained in the *Manual on Uniform Control Devices* available from the Montana Department of Transportation.
- i. When required by the United States Postal Service, the Applicant(s) must provide an off-street area for mail delivery.

- j. An Easement may be required to include, but not limited to, the following uses:
  - i. School Bus Turnaround;
  - ii. Mail Boxes;
  - iii. Fire Fighting Staging Areas; and
  - iv. School Children Shelters;
- k. "Subdivision roadway improvements" will be required wherever the Board of Commissioners or the County Road Superintendent determine that current access to Lots of a proposed Subdivision is inadequate. "Roadway Improvements" refer to: subgrade preparation; placement of base course and surface material; construction of bridge and drainage systems; and, where required, construction of sidewalks, curbs and gutters.
- l. All roadway and bridge improvements that provide access to Subdivisions shall be aligned, platted, designed, constructed, and certified by a Professional Land Surveyor and/or professional engineer as applicable under Montana law, prior to final plat approval.
- m. Roadway Improvements which have been designed by and constructed under the supervision of a registered professional engineer shall, upon completion of their construction, be certified by the engineer as meeting the standards herein as a condition of filing the Subdivision plat. Engineering certification shall also be a condition of the County's issuance of a Satisfaction of Improvements Guarantee in the event the improvements were not constructed and certified prior to the filing of the final or minor Subdivision plat. NOTE: Under certain conditions the County may not issue a Satisfaction of Guarantee until a specific period of time has passed to evaluate the performance of the guaranteed improvement.
- n. All County road approaches shall be inspected and approved by the County Road Supervisor prior to final plat approval and shall comply with the following provisions:
  - i. Sight Distance: A minimum of 500 feet clear visibility in both directions;
  - ii. Arrangement: Where practical, approaches shall be separated by not less than 100 feet;
  - iii. Materials: The permittee shall be responsible to supply, place, and property compact all materials necessary for construction of the approach:

1. Fill: Subject to inspection and approval by the County Road Supervisor. All fill shall be free of organic debris such as wood and shall be certified noxious and nuisance weed free;
  2. Base Course: Shall consist of not less than nine(9) inches of (4) four inch minus pit-run gravel containing sufficient granular fines to fill the voids between the larger gravel and stone; and
  3. Surfacing: (1) When approaching a gravel road, surfacing shall consist of not less than three inches of less than (1) one inch Type 'A' crushed gravel and shall extend to the right of way line; (2) When approaching a hard surfaced county road, surfacing shall consist of not less than; and (3) three inches of bituminous material and shall extend twelve feet from the outside shoulder line, or the right of way line, whichever is less;
- iv. Side Slope: The side slope shall be constructed to greater than or equal to a 6:1 ratio;
  - v. Drainage: All approaches shall either drain away from the traveled way or have sufficient crown to cause all drainage to run to the sides of the approach rather than drain onto the road. Approaches shall also be constructed so as not to impair drainage within the road right-of-way or alter the drainage of areas adjacent to the highway right-of-way. Culverts and drop inlets shall be installed where required;
  - vi. Culverts: Culverts shall be engineered, inspected, and approved by a licensed P.E. in the State of Montana, and shall be a minimum of eighteen(18) inches in diameter; and
  - vii. Maintenance: The permittee or homeowner(s) shall maintain the installations and structures to their original condition, in perpetuity, and shall be responsible for all necessary expenses;
  - o. All street and Road Improvements shall be inspected and approved by the Park County Road Supervisor prior to final plat approval.

G. **Reclamation of Disturbed Areas**: In order to protect the land from erosion and the spread of noxious weeds disturbed areas must have their vegetation re-established. Cut and fill slopes and borrow areas must be covered with topsoil, mulched and planted with appropriate ground cover during the earliest suitable season. The choice of species to be used shall be made in consultation with the

Community Development Office and either, the local Natural Resource Conservation Service, or the MSU Extension Office.

- H. **Noxious Weeds**: If noxious weed growth appears on private streets or roads, immediate steps must be taken by the property owners' association to remove or control all noxious weeds and prevent any spreading of any noxious weeds.

**TABLE 1: Road Design Standards for Subdivisions**

<b><u>Minimum Design Standards</u></b>	<b><u>Collector</u></b>	<b><u>Local Road</u></b>
<b>1. Minimum right-of-way width</b> a. level terrain b. hilly terrain	----- 60 ft. 60 ft.	----- 60 ft. 60 ft.
<b>2. Minimum roadway width <sup>1</sup></b>	24 ft.	24 ft.
<b>3. Minimum curb radius or edge of pavement at intersections</b>	25 ft.	25 ft.
<b>4. Maximum grades</b>	8%	10%
<b>5. Approaches onto Public Roads</b> a. minimum sight distance b. minimum width c. maximum grade for 20'	500 ft. 24 ft. 5%	500 ft. 24 ft. 5%
<b>6. Curvature <sup>2</sup></b> a. design speed b. maximum curve c. minimum radius	30 mph 23 249 ft.	20 mph 53.5 107 ft.
<b>7. Cul-de-sacs/Turnarounds</b> a. maximum road length b. cul-de-sac: minimum outside right-of-way radius c. cul-de-sac: minimum outside roadway radius d. "T" turnaround	---- ---- ---- ----	750 ft. 50 ft. 45 ft. 50 ft. each
<b>8. New bridges</b> a. curb-to-curb widths <sup>3</sup> b. design load capacity c. vertical clearance d. non-motorized lanes (if required)	24 ft. 40 tons 15 ft. 5 ft.	24 ft. 40 tons 15 ft. 5 ft.

<sup>1</sup> Where parking will be permitted add eight feet on each side. If guardrail installation is required or a shoulder is desired, add two feet to each side of roadway.

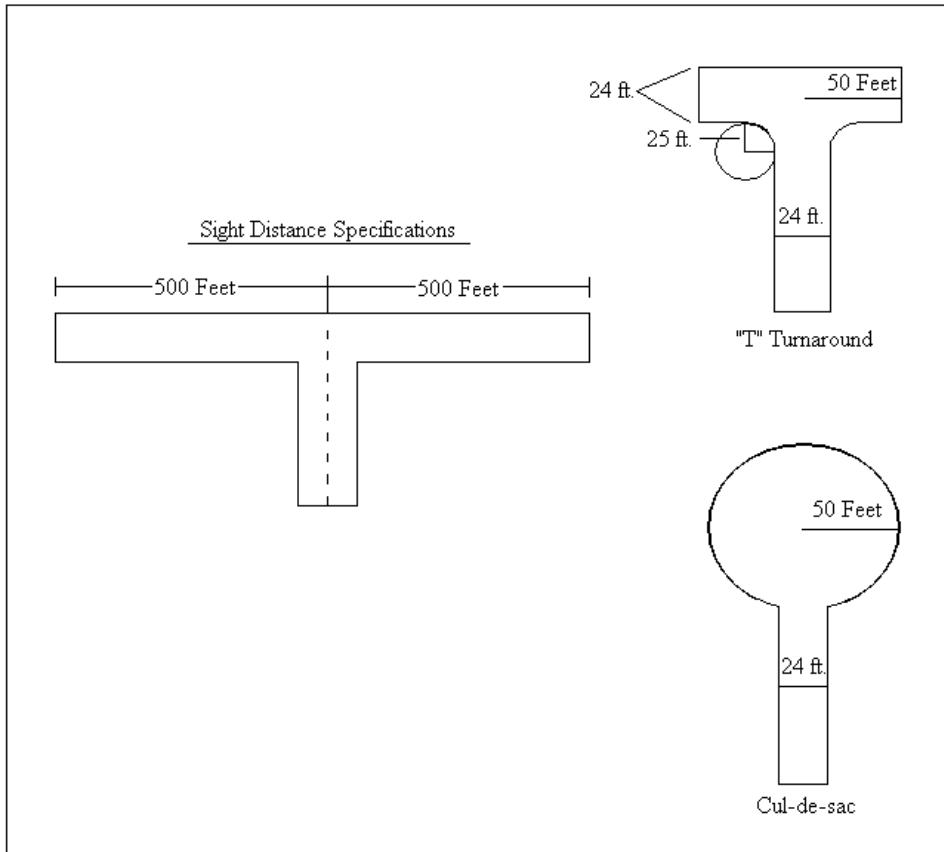
<sup>2</sup> Curvature is based on a super-elevation of .08/ft.

<sup>3</sup> Width of the bridge roadway surface should match the width of the roadway system it joins.



<p><b>9. Underpasses / Tunnels</b></p> <p>a. Curb to Curb Width shall be same as driving width plus two feet on each side.</p> <p>b. Minimum Vertical Clearance</p>	15'	15'
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**Table 2: Cul-de-Sac / T-Turnaround / Site Distance Specifications**



**VI-I. Drainage Facilities**

A. The drainage system and facilities required for any surface run-off affecting the Subdivision are subject to approval by the Board of Commissioners. Subdivisions containing Lots less than 20 acres in size must also be reviewed and approved under Title 76, Chapter 4, MCA, by the DEQ.

1. **Road Surface:** The road surface shall be sloped with a crown of -2% to -6%, depending on the type of soil in the subgrade. Poorly drained subgrade soil (heavy clay, for example) will require a steeper crown than if the subgrade material is well-drained sand or gravel.
2. **Drainage Ditches:** Drainage ditches along the sides of gravel roads shall have a minimum grade of 0.4%, and may have grades up to 8.0% where lined with established grasses or rip rap, or where velocity control

devices are provided. Plain soil and unlined ditches should not exceed a Run:Rise ratio of 1:2/2:1.

B. A grading and drainage plan as required by section II-A-5(6) is subject to approval by the Road Department Supervisor:

1. Storm Drainage Plan:

- i. Except as provided in (3) below, a storm drainage plan must be designed in accordance with Montana Department of Environmental Quality – Circular DEQ-8; and
- ii. A storm drainage plan must include a maintenance plan for all drainage structures. The maintenance plan must describe the maintenance structures, provide a maintenance schedule, and designate the entity responsible for performing maintenance. The Subdivision Administrator may require the Applicant to create a homeowner’s association or other legal entity that will be responsible for maintenance of storm drainage structures and that will have authority to charge appropriate fees. The maintenance plan must include easements and agreements as necessary for operation and maintenance of all proposed off-site storm drainage structures or facilities.

2. Grading Plan:

- i. The preliminary grading plan, including all road plans and profiles must be submitted to the Subdivision Administrator at the time of the preliminary plat submittal; and
- ii. If fill material will be placed within a delineated floodplain, the Applicant shall provide evidence that the Army Corps of Engineers has been notified and appropriate approvals have been obtained. Any person planning to work in or near a year-round (perennial) stream or river on private or public land must first submit a 310 Permit (Conservation District’s Decision) from the local conservation district.

3. Exemptions:

- i. Exemptions from using DEQ Circular and the Administrative Rules of Montana when preparing grading and drainage plans shall be granted if the Subdivision meets the following exemption criteria:
  - a. The proposed Subdivision has five or fewer parcels;
  - b. The area of disturbance within the proposed Subdivision has a slope of 3% or less;

- c. Unvegetated areas including, but not limited to, road surfaces, road cuts and fills, roofs, and driveways, comprise less than 15% of the total acreage of the proposed Subdivision;
  - d. Drainage structures, such as roads and ditches, will be constructed;
  - e. Completion of the proposed Subdivision will not increase the amount of pre-development storm runoff from the area;
  - f. The proposed Subdivision will not alter pre-development water flow patterns; and
  - g. The Applicant(s) provides the Subdivision Administrator with a 7 ½ - minute USGS topographic map showing the proposed Subdivision and, if available, a map with contour intervals no greater than 20 feet that shows drainage patterns [DEQ 17.36.310].
- C. Curbs and gutters or swales will be required based on the character of the area, density of development, and nature of adjoining properties. Curbs and gutters of adjoining properties must be extended in conformance with current specifications of local and state authorities.
- D. Culverts and bridges of adequate size and suitable placement must be provided and installed by the Applicant(s) where drainage channels intersect any street or road Right-Of-Way or Easement. All culverts and bridges must be constructed and installed according to applicable local and state standards. Culverts and other drainage facilities must be large enough to accommodate potential run-off from upriver drainage areas.
- E. The Applicant(s) must provide suitable drainage facilities for any surface run-off affecting the Subdivision. These facilities must be located in street Rights-Of-Way or in perpetual Easements of appropriate widths.
- F. Drainage systems must not discharge into any sanitary sewer facility or irrigation facility.
- G. Drainage systems must be designed and certified by a registered professional engineer.
- H. The Board of Commissioners may require the Applicant(s) to grant Easements to prevent encroachment or disruption of drainage ways or facilities. Drainage

Easements must be shown on the plat and a signed statement granting the Easements must appear on the plat.

**VI-J. Water Supply Systems**

- A. For Subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of supplying domestic water to each Lot in the Subdivision must comply with the design standards adopted by the Montana DEQ and contained in the Administrative Rules of Montana (ARM) 17.36.301, 17.36.302, 17.36.303, and 17.36.305. By this reference these DEQ standards are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- B. The Board of Commissioners may not approve the final plat of a Subdivision containing Lots of less than 20 acres in size, unless the Subdivision has been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA.
- C. If the Lots are 20 acres or greater in size, the Applicant(s) shall demonstrate that there is an adequate water source on each Lot prior to final plat approval.
- D. Any central water supply system must provide adequate and accessible water for fire protection.
- E. The Applicant(s) shall provide information to the Park County Health Department illustrating adequate water supply availability for the proposed parcels. The Applicant(s) shall pay any necessary fees to the Park County Health Department.
- F. Encourage development near existing infrastructure to effectively connect to these systems.

**VI-K. Sewage Treatment Systems**

- A. For Subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of disposing of sewage from each Lot in the Subdivision must comply with the design standards adopted by the DEQ and contained in the (ARM) 17.36.301, 17.36.302, 17.36.312, and 17.36.320 through 17.36.326. By this reference these DEQ standards are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- B. Pursuant to Section 76-3-511, MCA, Park County held a public hearing in *Gesko et al. v. Park County*, DV 98-83, and made the requisite findings that allow the Board of Commissioners to impose conditions on water and sanitation systems

that meet the requirements of the regulations, circulars and adopted ARMs of the Montana State Department of Environmental Quality, as amended, regardless of size of Lots and as required by the Board of Commissioners.

- C. For Subdivisions containing parcels containing 20 acres or more, the Applicant(s) shall have demonstrated that there is at least one area for a septic system and a replacement drain field for each Lot before the Board of Commissioners may approve the final plat.
- D. Encourage development near existing infrastructure to effectively connect to these systems.

**VI-L. Solid Waste**

- A. For Subdivisions that will create one or more parcels containing less than 20 acres, the proposed method must comply with the standards adopted by the DEQ and contained in the (ARM) 17.36.309. By this reference this DEQ standard is incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- B. Before the Board of Commissioners will approve the final plat of a Subdivision containing Lots of less than 20 acres in size, the Subdivision must have been approved by the DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act Sections 76-4-101, *et seq.*, MCA.
- C. For Subdivisions that will create one or more parcels containing 20 acres ore more and less than 160 acres, the proposed method of storing and disposing of solid waste generated within the Subdivision must comply with the local environmental health department regulations.
- D. All solid waste plans for Subdivisions must be reviewed and accepted by the Park County Solid Waste Department prior to final plat approval.

**VI-M. Utilities**

- A. The Applicant(s) must provide adequate and appropriate Easements for the construction and maintenance of utilities within the Subdivision. The Applicant(s) must obtain any Easements necessary to extend utilities to the Subdivision.
- B. Utilities must be placed underground, wherever practical. Underground utilities, if placed in a street Right-Of-Way, must be located between the roadway and the Right-Of-Way line to simplify location and repair of lines. Underground facilities must be installed after the road has been brought to grade and before it is surfaced and before final plat approval.

- C. Where practical, overhead utility lines must be located at the rear property line.
- D. Utility facilities must be designed by utility firms in cooperation with the Applicant(s). These facilities are subject to all applicable laws, rules, and regulations of the appropriate regulatory authorities.
- E. Utility easements located between adjoining Lots must be centered on Lot lines. If Easements are placed in the street, they must be located between the roadway and the Right-Of-Way line.
- F. Utility easements must be 15 feet wide unless otherwise specified by a utility company or Board of Commissioners.
- G. When a utility is to be located in an existing, dedicated Right-Of-Way, an encroachment permit must be obtained from the Board of Commissioners, or local or state highway department.
- H. In addition to showing the location of utility easements on the plat with dashed lines, the following statement must appear on the final plat:

“The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, internet, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as ‘Utility Easement’ to have and to hold forever.”

**VI-N. Irrigation Easements**

- A. Except as noted in paragraph (B), below, the Applicant(s) shall establish within the Subdivision ditch and pipeline Easements that:
  - 1. Are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation to persons and land legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the Subdivision Lots;
  - 2. Are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
  - 3. Prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

- B. The Applicant(s) need not establish irrigation easements as provided above if:
1. The average Lot size in the proposed Subdivision will be one acre or less and the Applicant(s) provides for disclosure, in a manner acceptable to the Board of Commissioners, notifying potential buyers that Lots within the Subdivision are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable to the Lots; or
  2. The water rights have been removed from the land within the Subdivision or the process has been initiated to remove the water rights from the Subdivided land; and
  3. The fact the water rights have been or will be removed from the land within the Subdivision is denoted on the preliminary plat. If the removal of water rights has not been completed at the time the final plat is filed, the Applicant(s) shall provide written notification to prospective buyers of the Applicant(s) intention to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

**VI-O. Disposition of Water Rights**

If a Subdivision will create Lots averaging less than five acres in size, the Applicant(s) shall submit evidence with the final plat that the Applicant(s) has:

- A. Reserved all or, a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer these water rights to a single entity for use by landowners within the Subdivision who have a legal right to the water and reserved and severed any remaining surface water rights from the land;
- B. If the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide for the use of a water right on the Subdivision Lots, established a Landowner's water use agreement administered through a single entity. This agreement must specify how the water rights will be administered and describe the rights and responsibilities of Landowners within the Subdivision who have a legal right and access to the water; or
- C. Reserved and severed all surface water rights from the land proposed for Subdivision.

VI-P. Park Land Dedication – Cash in Lieu – Waivers – Administration

- A. Except as provided below, the final plat of a Subdivision must show that the Applicant(s) has dedicated to the Board of Commissioners a cash or land donation equal to:
1. Eleven percent of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
  2. Seven and one-half percent of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than one acre;
  3. Five percent of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three acres; and
  4. Two and one-half percent of the area of the land proposed to be subdivided into parcels larger than three acres and not larger than five acres.
- B. A park dedication is not required for:
1. Subdivision Lots larger than five acres;
  2. Nonresidential Subdivision Lots;
  3. Subdivisions in which parcels of land will not be created, other than Subdivisions that will provide permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or
  4. Subdivisions which will create only one additional parcel.
  5. First Minor Subdivisions from a tract of record [MCA 76-3-621(3)(e)], except for First Minors that fall under MCA 76-3-621(8)(a)(ii).
- C. The Board of Commissioners, in consultation with the Applicant(s) and the Planning Board or Park & Recreation board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the Applicant(s), may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation. The land dedicated for park use may be inside or outside the boundaries of the proposed Subdivision. The Board of Commissioners shall use the following criteria to determine the suitability of lands for parkland:



1. Public Health and Safety;
  2. Topography;
  3. Location; and
  4. Suitability of the site for active recreation or public gathering.
- C. The Board of Commissioners shall waive the park dedication requirement if it determines that:
1.
    - a. The preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and
    - b. The area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under section VI-P(A); or
  2.
    - a. The proposed Subdivision will provide for the long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and
    - b. The provision of this long-term protection will result in the reduction of the area of the land proposed to be subdivided by an amount equal to or exceeding the area that would have had to be dedicated under VI-P(A) above; or
  3. the area of the land proposed to be subdivided, by virtue of a combination of the provisions of paragraphs (D)(1) and (2) above, is reduced by an amount equal to or exceeding the area of the dedication required under section VI-P(A); or
  4.
    - a. The Applicant(s) provides for land outside of the Subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the Subdivision; and
    - b. The area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under section VI-P(A).
- E. The local Board of Commissioners may waive the park dedication requirement if:

1. The Applicant(s) provides land outside the Subdivision that affords long-term protections of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and
  2. The area of land to be subject to long-term protection, as provided in paragraph (E)(1) above, equals or exceeds the area of dedication required under section VI-P(A).
- F. Subject to the approval of the Board of Commissioners and acceptance by the school district trustees, a Applicant(s) may dedicate a land donation provided under section VI-P(A) to a school district, adequate to be used for school facilities or buildings.
- G. The Board of Commissioners will administer funds dedicated to the public under this section in accordance with Section 76-3-621, MCA.
- H. For the purposes of this park dedication requirement:
1. “Cash donation” means the fair market value of the unsubdivided, unimproved land; and
  2. “Dwelling unit” means a residential structure in which a person or persons reside.
- I. **Public Trails:** Public trails can be used as dedicated park land for Subdivisions as long as they adhere to the definitions of “Trails” and “Park Land” set forth in these regulations. Public trails are strongly encouraged to be included in all Subdivisions and may become a requirement of preliminary plat approval once Park County develops a County Trails Plan (See Chapter 3, LU 6.2.1, of the *Park County Growth Policy*).

VI-Q. Fire Protection Requirements

Fire Protection Requirements for Park County Subdivisions are described in this section, and **Appendix B “Park County Fire Protection”**, of the Park County Subdivision Regulations.

All Subdivisions shall be planned, designed, constructed, and maintained so as to minimize the risk of fire, permit the effective and efficient suppression of fires, and protect persons, property, and the natural environment. Fire protection measures shall include:

- A. All proposed Subdivisions shall comply with the provisions of this section and **Appendix B**, of these regulations;
- B. **Fire Protection Plan Requirements:** For all proposed Subdivisions in Park County, the Applicant(s) shall provide, with the preliminary plat application, a

Fire Protection Plan. The Fire Protection Plan shall be a separate document and shall address/contain the following information:

1. Fire Protection Availability: The Applicant(s) shall provide verification of available fire protection services adequate to respond to fires that may occur within a Subdivision, through a fire protection district or a private contract with a fire protection district as outlined in Section 7-33-2107, MCA;
2. Fire Protection Map: For all Subdivisions, the Applicant(s) shall provide a detailed fire protection map, one hard copy and one electronic copy (pdf. or jpeg), depicting the following:
  - i. Vegetation on the property;
  - ii. Physical and Legal Access;
  - iii. Proposed road and/or driveway specifications and locations;
  - iv. Existing water sources on the property that provide a sustainable year round water supply;
  - v. Proposed water sources that meet the criteria under section I and II of Appendix B.
  - vi. Slopes and topography on the property; and
  - vii. Proposed building sites;
3. Existing/Proposed Covenants: For all Subdivisions, the Applicant(s) shall provide applicable segments of all existing and proposed covenants that involve vegetation management and fire protection on the property, including but not limited to;
  - i. Vegetation management provisions, if any;
  - ii. Building size and height limitations, if any;
  - iii. Setback requirements, if any;
  - iv. Road maintenance provisions, if any;
  - v. Water fill site maintenance provisions, if any;
  - vi. Landscaping provisions, if any;
  - vii. Construction provisions, if any;
  - viii. Survivable and/or defensible space provisions, if any; and
  - ix. Residential home building materials and design provisions, if any;
4. Fire Protection Compliance: For all Subdivisions, the Applicant(s) shall provide detailed information illustrating compliance with the general fire protection requirements as outlined under section **I** of **Appendix B**, of these regulations;
5. Residential Subdivisions: For all proposed residential Subdivisions, the Applicant(s) shall provide detailed information illustrating conformance to one of the Fire Protection Packages, outlined in section **II-A, B, C**, or

**D of Appendix B**, of these regulations. The Fire Protection Package shall correspond with the size/Lot number and category of the proposed Subdivision [i.e. A proposed major residential Subdivision with 29 Lots/units shall illustrate conformance to a Fire Protection Package under section **II-C of Appendix B**, [*Fire Protection Requirements for Major Residential Subdivision (10 through 49 Lots/units)*];

6. Commercial Subdivisions: For all Commercial Subdivisions, the Applicant(s) shall provide detailed information illustrating conformance to the requirements outlined in section **II-E of Appendix B**;
7. Wildland Urban Interface Areas: For all proposed Subdivisions located in the Wildland Urban Interface (WUI), as may be identified by the United States Forest Service (USFS), the Montana Department of Natural Resources and Conservation, a local Fire Protection Authority (FPA), a local Growth Policy, or a Community Wildfire Protection Plan (CWPP), the Applicant(s) shall provide detailed information illustrating conformance to the requirements of section **II-F of Appendix B**, as well as conformance to all other applicable requirements under section **I and II of Appendix B**, of these regulations. [*Subdivisions will be denied in the wildland-urban interface area unless the Applicant(s) proposes construction techniques or other mitigation measures acceptable to the fire protection authority and the Board of Commissioners (effective October 1, 2009)*].
8. Alternative Options: The Applicant(s) may propose a fire protection plan that offers alternative fire protection technologies, features, and systems, as outlined in section I-E of **Appendix B**.

C. Fire Protection Plan Process: The following list illustrates the appropriate timing and authority for developing / reviewing a Fire Protection Plan:

1. Pre-Application Meeting: The Subdivision Administrator shall provide to the Applicant(s) a “Fire Protection Plan Handout” that illustrates the necessary requirements and provisions to be addressed in a Fire Protection Plan, as well as the development, review, and approval process of the Fire Protection Plan.
2. Applicant(s) Responsibility: The Applicant(s) is responsible for developing a complete Fire Protection Plan and is encouraged to communicate directly with the Subdivision Administrator during the development of the Fire Protection Plan should any questions or concerns arise.

3. Subdivision Administrator Responsibility: The Subdivision Administrator shall communicate directly with the FPA having jurisdiction should any question or concerns arise.
  4. Submittal: The Applicant(s) shall submit a complete Fire Protection Plan with the preliminary plat application. Again, the Fire Protection Plan shall be a separate document containing all necessary information.
  5. Fire Protection Plan Review: The Subdivision Administrator shall provide a copy of the preliminary plat application to the FPA having jurisdiction for preliminary review. The Subdivision Administrator shall review the Fire Protection Plan during the element and sufficiency review process, as identified under section **II-A-6** of these regulations. During the review process, the Subdivision Administrator may require additional Fire Protection information based on the requirements under section **B** of **VI-Q** (above), and/or based on additional requirements determined by the FPA (see section **I-D** of **Appendix B**).
- D. Fire Protection Plan Approval: Once the preliminary plat application (including the Fire Protection Plan) has been deemed sufficient by the Subdivision Administrator, the FPA shall continue reviewing the Fire Protection Plan and provide any additional recommended findings and conditions within 15 working days of the preliminary application being deemed sufficient under section **II-A-6** of these regulations. The Park County Planning Board shall review the preliminary plat application, including the Fire Protection Plan, and forward a recommendation to the Board of Commissioners; approval, conditional approval, or denial of the Fire Protection Plan, shall be made by the Board of Commissioners.

**VI-S. Noxious Weeds:**

A weed control plan shall be developed and implemented for every new Subdivision. The Park County Weed Supervisor approves the plan for the First Minor Subdivision and the Park County Weed Control Board for all Major and Subsequent Minor Subdivisions. The agreement with the Weed Control Board Chair shall be signed, notarized, and recorded with the final plat.

- A. Noxious Weed Management on Parcels under Applicant's Control. The Applicant agrees to control noxious weeds on the parcels under their ownership until the parcels or remainder tracts have transferred ownership.
- B. Noxious Weed Control on Roadways. The Applicant agrees to control noxious weeds on all roadways within the Subdivision until a homeowners' association, if applicable, accepts the responsibility of managing noxious weeds along applicable roadways within the Subdivision. For sold parcels, noxious weed management on abutting roadways will be the responsibility of the individual property owners.

- C. Final Plat. Applicant shall place a statement on the face of the Final Plat stating, “Weed management will be the responsibility of the individual property owners within the Subdivision.”

**VI-T. Fencing**

Upon determination by the Park County Community Development Department, Planning Board, or Board, Applicant(s) may be required to install perimeter fencing where necessary around Subdivisions to prevent conflicts between neighboring Landowners and subdivided property (See Chapter 3.2, LU 1.1.2, Park County Growth Policy). When required, wildlife friendly fencing shall be constructed in accordance Montana Fish, Wildlife, and Parks Subdivision Fencing Specifications.

## **VII. AREAS THAT WILL PROVIDE MULTIPLE SPACES FOR RECREATIONAL CAMPING VEHICLES OR MOBILE HOMES - LAND SUBDIVISIONS CREATED BY RENT OR LEASE**

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### **VII-A. Definition**

A Subdivision created by rent or lease, including a mobile home/manufactured home or recreational vehicle park, is any tract of land divided by renting or leasing portions of it. The land is owned, however, as one parcel under single ownership (which can include a number of persons owning property in common). Plans, not plats, are submitted to the Subdivision Administrator for review. The plan shows spaces, not Lots. The plan must comply with applicable zoning. It is strongly suggested that Applicant(s) meet with the Park County Health Department to learn about the requirements of the Montana Department of Health and Human Services (DPHHS) prior to designing their plans.

### **VII-B. Subdivisions That Will Provide Multiple Spaces for Recreational Camping Vehicles or Mobile/Manufactured Homes**

#### **A. Recreational Camping Vehicles**

Developments which are subject to Subdivision review because they will provide two or more spaces for recreational camping vehicles will be reviewed under section VII-F Recreational Vehicle Park Standards, below.

#### **B. Mobile/Manufactured Homes**

Developments which are subject to Subdivision review because they will provide two or more spaces for mobile/manufactured homes will be reviewed under section VII-E Mobile/Manufactured Home Park Standards, below.

#### **C. Subdivisions for Lease or Rent, Generally**

1. Land Subdivision created by rent or lease will be reviewed under the procedures described in chapter IV, Major Subdivisions, or section III, Minor Subdivisions, as may be appropriate, except that the Applicant(s) shall submit an un-surveyed final plan drawn to scale, rather than a final plat, following the final plat procedure in chapter II.
2. Land Subdivisions created by rent or lease are subject to the applicable standards contained in chapter VI.

### **VII-C. Procedures for Review**

#### **VII-C-1. Review and Approval**

Subdivisions which will provide multiple spaces for Recreational Camping Vehicles or Mobile Homes and Subdivisions created for rent or lease are exempt from the surveying and filing requirements of MSPA. However, these Subdivisions must be submitted for review and approved by the Board of Commissioners before portions of the Subdivision may be rented or leased.

A. Submittal

The Applicant(s) shall submit completed applications in accordance with section II-A-5 and a plan of the proposed development, conforming to the requirements for preliminary plats.

B. Review

The procedure used to review Subdivisions for rent or lease will depend on the number of spaces within the proposed Subdivision. Proposed Subdivisions containing six or more spaces must be reviewed pursuant to chapter IV of these regulations. Proposed Subdivisions containing five or fewer spaces must be reviewed pursuant to chapter III of these regulations. The Applicant(s) shall submit to the Subdivision Administrator the preliminary plans, profiles, tentative grades, and specifications for proposed improvements. The plan must show the space layout and the proposed location of the Mobile Home, Recreational Vehicle, or other unit on the land included in the plan.

**VII-C-2. Improvements**

The Applicant(s) shall install all required improvements before renting or leasing any portion of the Subdivision. The Board of Commissioners or its agents will inspect all required improvements in order to assure conformance with the approved construction plans and specifications.

**VII-C-3. Final Plan Review**

In lieu of filing a final plat, the Applicant(s) shall submit two copies of the final plan to the Subdivision Administrator complying with the requirements of final plats in section II. The final plan will be reviewed to assure that it conforms to the approved preliminary plan. Two copies of the approved plans shall be submitted and maintained in the Park County Community Development Office and Park County Department of Health.

**VII-C-4. DPHHS License**

If a Subdivision that will provide multiple spaces for Recreational Camping Vehicles or Mobile Homes is also a “trailer court,” “work camp,” “youth camp,” or “campground” as those terms are defined in Section 50-52-102, MCA, the Board of Commissioners will not grant final approval of the Subdivision until the Applicant(s) obtains a license for the



facility from the Montana Department of Public Health and Human Services (DPHHS) under Title 50, Chapter 52, MCA.

**VII-D. Design Standards for Subdivision Spaces Created by Rent or Lease**

**VII-D-1. Design Standards**

Subdivisions created by rent or lease must comply with the provisions of Section VI.

**VII-D-2. Additional Provisions**

The Board of Commissioners may require provisions for:

- A. Enclosed storage facilities on each space or in compounds located within a reasonable distance;
- B. A central area for storage or parking of boats, trailers, or other recreational vehicles;
- C. Landscaping or fencing to serve as a buffer between the development and adjacent properties;
- D. An off-street area for mail delivery;
- E. A school bus turnaround; and
- F. Street lighting.

**VII-E. Mobile/Manufactured Home Park Standards**

**VII-E-1. Mobile/Manufactured Home Spaces**

- A. Mobile/Manufactured Home spaces must be arranged to permit the safe and practical placement and removal of mobile homes.
- B. All Mobile/Manufactured Homes must be located at least 25 feet from any property boundary line abutting upon a public street or highway Right-Of-Way and at least 15 feet from other boundary lines of the park.
- C. The Mobile/Manufactured Home pad must be located at least 10 feet from the street that serves it.
- D. The size of the Mobile/Manufactured Home pad must be suitable for the general market to be served and must fit the dimensions of Mobile/Manufactured Homes anticipated.

- E. A Mobile/Manufactured Home pad may not occupy more than one-third (1/3) of the area of its space. The total area occupied by a Mobile Home and its roofed accessory buildings and structures may not exceed two-thirds (2/3) of the area of a space.
- F. The Board of Commissioners may require that the Mobile/Manufactured Home pad be improved to provide adequate support for the placement and tie-down of the Mobile Home.
- G. No Mobile/Manufactured Home or its attached structures, such as awnings and carports, may be located within 20 feet of any other Mobile Home or its attached structures.
- H. No detached structure, such as a storage shed, may be located within five feet of any Mobile/Manufactured Home or its attached structures.
- I. A minimum of two off-street parking spaces must be provided on or adjacent to each Mobile/Manufactured Home space. The driveway must be located to allow for convenient access to the Mobile/Manufactured Home, and be a minimum of 10 feet wide.
- J. One guest parking space must be provided for each 10 Mobile/Manufactured Home spaces. Group parking may be provided.
- K. The limits of each Mobile/Manufactured Home space must be clearly marked on the ground by permanent flush stakes, markers or other suitable means. Location of space limits on the ground must be approximately the same as those shown on the approved plans. Precise engineering of space limits is not required either on the plans or on the ground.
- L. Each Mobile/Manufactured Home must be skirted within 30 days after it is moved to a space within the Mobile/Manufactured Home park. The skirting must be of a fire-resistant material similar to that of the Mobile/Manufactured Home exterior.

**VII-E-2. Streets or Roads**

Streets or roads within a Mobile/Manufactured Home park must meet the standards specified in section VI-H Streets and Roads. Streets or roads must be designed to allow safe placement and removal of mobile homes.

- A. Streets or roads must be designed to provide safe access to Public Roads.
- B. Streets or roads within the Mobile/Manufactured Home park must be designed to provide safe traffic circulation and parking.

- C. One-way streets or roads must be at least 15 feet wide; two-way roads must be at least 24 feet wide.

### **VII-E-3. Electrical Systems**

Electrical systems must be designed and installed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political Subdivision does not assume jurisdiction, such installations must be designed and constructed in accordance with the applicable state electrical standards.

### **VII-E-4. Gas Systems**

- A. Gas equipment and installations must be designed and constructed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political Subdivision does not assume jurisdiction, such installation must be designed and constructed in accordance with the applicable provisions of the “National Fuel Gas Code” (NFPA Pamphlet 54-1981) and the “Standard for the Storage and Handling of Liquefied Petroleum Gases” (NFPA Pamphlet 58-1981).
- B. A readily accessible and identified shutoff valve controlling the flow of gas to the entire gas piping system must be installed near to the point of connection of the liquefied petroleum gas container.
- C. Each mobile/Manufactured home space must have an accessible, listed gas shutoff installed. This valve must not be located under a mobile home. Whenever the mobile home space gas outlet is not in use, the shutoff valve must be plugged to prevent accidental discharge.

## **VII-F. Recreational Vehicle Park Standards**

### **VII-F-1. Recreational Vehicle Spaces**

- A. Spaces in Recreational Vehicle Parks must be arranged to allow for the safe movement of traffic and access to spaces.
- B. Roads within Recreational Vehicle Parks must be designed to provide safe traffic circulation and parking.
- C. Recreational Vehicles must be separated from each other and from other structures by at least 15 feet. Any accessory structures such as attached awnings must, for purposes of this separation requirement, be considered part of the recreational vehicle.

- D. No Recreational Vehicle Space may be located less than 25 feet from any Public Street or highway Right-Of-Way.

**VII-F-2. Density**

The density of a Recreational Vehicle Park must not exceed 25 Recreational Vehicle Spaces per acre of gross site area.

## **VIII. PLANNED UNIT DEVELOPMENTS**

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### **VIII-A. Purpose**

The purpose of this section is to provide flexibility in applying certain Subdivision standards, allowing the Applicant(s) creativity in Subdivision design.

### **VIII-B. Procedures**

#### **A. Designation as a Planned Unit Development (PUD)**

1. **Preliminary Procedures:** The Applicant(s) shall meet with the Subdivision Administrator prior to the submittal of the preliminary plat in order to discuss development plans and to determine if designation of a PUD is appropriate. The owner/Applicant(s) shall submit to the Planning Staff the following:
  - a. A sketch plan of the proposed Subdivision, containing all information requested in II-A-4 (pre-application process) of these regulations;
  - b. A description of open space, recreational facilities, roads and other facilities proposed to be under common ownership. If it is a rural PUD, the Applicant(s) shall describe how the development will preserve over 75% of agriculture land, open space, wildlife habitat or riparian areas within the development;
  - c. A description of proposed Restrictive Covenants, if any;
  - d. Proposed forms of ownership of property within the development;
  - e. A statement describing measures to be taken to assure permanence and maintenance of Open Space and other facilities to be held in common ownership;
  - f. If the development plan calls for a development time of eighteen (18) months or more for street utility improvements, a schedule showing the time when the improvements will be completed must be provided; and
  - g. A description of any proposed modification from chapter VI, Design and Improvement Standards, of these regulations.

- B. **Review by the Subdivision Administrator:** Before the Subdivision Administrator determines the development as a PUD, the Subdivision

Administrator shall review the proposed plan to determine whether or not the proposed development plan promotes the clustering of individual building sites or the preservation of Open Space, agricultural lands, Wildlife Habitat or winter range, or riparian areas and conforms to the intent of this section and does one or more of the following:

1. Preserves to the maximum extent possible, the natural characteristics of the land including topography, vegetation, rivers, and other bodies of water;
2. Provides for local economies in the provision of roads and other Public Improvements;
3. Preserves productive agriculture land;
4. Protects important historic sites or structures or areas of important wildlife habitat; or
5. Provides developed facilities for recreational purposes.

- C. **Approval by the Subdivision Administrator:** The Subdivision Administrator shall approve or disapprove the designation of the development as a PUD in writing within ten (10) days of the submission of development plans. If disapproved, the reasons for disapproval shall be stated in writing.

Designation as a PUD does not constitute approval of the specific details or modifications proposed in the plan.

If the Subdivision Administrator designates a proposed development plan as a PUD, the preliminary plat may then be submitted for review. Submittal must comply with requirements and procedures contained in the following sections:

1. II-A-5 [Subdivision Application and Preliminary Plat Submittal];
2. IV [Major Subdivisions]; and
3. II-B [Final Plats].

### **VIII-C. Standards**

#### **VIII-C-1. Design Standards**

PUDs must comply with the standards contained in chapter VI [Design and Improvement Standards.] However, the Board of Commissioners may modify the design and improvement standards contained in section VI-F Lots, section VI-G Blocks, section VI-H Streets and Roads, and section VI-P Park Land Dedication upon request of the

Applicant(s) when the plan for a PUD includes provisions for efficient traffic circulation, adequate light, air, Open Space and must not compromise Public Health and Safety. In such cases, no application for a variance under section XI-B [Variances] of these regulations is necessary.

**VIII-C-2. Streets**

The arrangement, type, extent, width, grade and location of all streets must be considered in their relation to existing and planned streets, to topographical conditions, and to public convenience and safety.

**VIII-C-3. Open Space**

Each PUD must comply with the requirements of section VI-P(D) of these regulations. The Open Space must be:

- A. Owned by a property owners' association; or
- B. Dedicated to public use, if acceptable to the Board of Commissioners; or
- C. A combination of (A) and (B) above.

The Board of Commissioners may waive dedication or cash donation requirements when the Applicant(s) agrees to create a property owners' association for the proposed Subdivision and deed to the association land to be held in perpetuity for use as parks or playgrounds.

## **IX. CONDOMINIUMS**

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### **IX-A. Procedures**

Unless exempted by Section 76-3-203, MCA, all condominium developments are Subdivisions subject to the terms of MSPA.

#### **IX-A-1. Review Where Land Will Not be Divided**

If no division of land will be created by a condominium Subdivision, the Subdivision must be reviewed under the procedures contained in section VII, [Subdivisions Created by Rent or Lease], with the following exception: final approval will not be given until the Applicant(s) has either installed all required improvements, or has entered into a Subdivision Improvements Agreement pursuant to section II-B- 8[Public Improvements Agreement; Guaranty.]

#### **IX-A-2. Condominium Subdivisions Involving Land Divisions**

If a proposed condominium Subdivision will involve a division of land, the Subdivision must be reviewed under the procedures contained in sections:

- 1). IV-A. Review and Approval Procedures for Major Subdivisions; and
- 2). II-B-A. Applicable sections for Final Plats.

### **IX-B. Standards**

#### **IX-B-1. Design Standards**

Condominium developments must comply with applicable standards contained in section VI, [Design and Improvement Standards.]

#### **IX-B-2. Unit Ownership Act**

Condominium developments must comply with all provisions of the Unit Ownership Act, Chapter Title 70, Chapter 23MCA.



## **X. CLUSTER DEVELOPMENT**

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The Board of Commissioners has adopted a growth policy that meets the requirements of Section 76-1-601, MCA, and further adopts the following options to promote Cluster Development and preserve Open Space.

### **X-A. Cluster Development, Option I**

#### **Cluster Development—Standards**

- A. If a proposed Subdivision meets the following Cluster development standards then there is a rebuttable presumption that the Development will not have an adverse affect on the Section 76-3-608(3)(a), MCA, criteria and therefore the Subdivision application does not need to include an Environmental Assessment (EA).

#### **Cluster Development Standards:**

1. The proposed Subdivision Clusters structures together and away from Open Space;
2. Open Space abuts neighboring open space and protects the most important and critical agricultural lands and wildlife habitat and corridors on the property;
3. Open Space constitutes at least 50% of the development's property including all past and proposed future phases of the development;
4. Multiple adjacent tracts of record may be aggregated to create a single parcel for the purpose of creating a Cluster Development;
5. There is no minimum Lot size other than those authorized under administrative rules adopted by the DEQ under Title 76, Chapter 4, MCA;
6. The location of Cluster Development should be close to existing communities, whenever possible;
7. The maximum size of parcels, not designated as Open Space, allowed within a Cluster Development is five (5) acres;
8. The development complies with all applicable zoning, Subdivision, and building code regulations and state laws; and
9. Open space may contain dedicated parkland, wildlife, river, and stream buffers, and up to 1/3 of Open Space areas may be used for community water and community wastewater systems. 100-year floodplains and hillsides with slopes greater than 25% must be subtracted from the total amount of required open space.

B. A Cluster Development receives the following incentives:

1. Density bonuses allowing the developer to build:
  - a. Fifty percent more units/Lots than allowed under zoning if 50% to 75% of the development is placed in a perpetual conservation easement; or
  - b. One hundred percent more units/Lots than allowed under zoning if more than 75% of the development is placed in a perpetual conservation easement;
2. If a proposed Subdivision meets the Cluster Development standards under paragraph (A) above then there is a rebuttable presumption that the development will not have an adverse Affect on the Section 76-3-608(3)(a), MCA, criteria and therefore the Subdivision application does not need to include an environmental assessment (EA).
3. Park dedication requirements for Clustered Subdivision under this section are waived.

**X-B. Cluster Development, Option I**

A. As authorized by Section 76-3-509, MCA, the following apply to Subdivisions proposed under this section:

1. An area of Open Space must be preserved that is at least as large as the area that will be developed;
2. Open space must be preserved through an irrevocable conservation easement, granted in perpetuity as provided in Title 76, Chapter 6, prohibiting further Subdivision of the parcel;
3. Unless the Subdivision will be provided with community sewer or water, each Lot in the Cluster must be a minimum of one acre;
4. Multiple adjacent tracts of record may be aggregated to create a single parcel for the purpose of creating a Cluster Development;
5. The maximum number of parcels permissible in a Cluster Development is the maximum number of parcels that are authorized by the administrative rules adopted by the DEQ under Title 76, Chapter 4, MCA; and
6. The maximum size of parcels allowed within a Cluster Development is five (5) acres.

B. Park dedication requirements for Clustered Development created under this section are waived.

**X-C. Cluster Development, Option II**

- A. The following apply to Cluster Developments created under this option:
1. The development must preserve an area of Open Space that is at least as large as the area that will be developed;
  2. The proposal must provide a mechanism for the maintenance of the Open Space in perpetuity. The Open Space may be dedicated to a homeowners' association for the purpose of maintenance, and may be used for agricultural or other purposes that enhance the preserved area;
  3. Unless the Subdivision will be served by a community sewer or water system, each Lot in the Cluster must be a minimum of one acre in size;
  4. Multiple adjacent tracts of record may be aggregated to create a single parcel for the purpose of creating a Cluster Development; and
  5. The location of Cluster Development should be close to existing communities, whenever possible.
- B. Park dedication requirements are waived for Clustered Development created under this section.

## **XI. ADMINISTRATIVE PROVISIONS**

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### XI-A. Fee Schedule

#### **Subdivision Review Fees**

The purpose of these fees is to defray the costs of processing applications and reviewing plats, plat supplements, advertising, holding public hearings, and other expenses related to the Subdivision review process. The Applicant(s) shall pay a non-refundable review fee at the time of application and consultant fees (if required) prior to final approval. All fees shall be payable to Park County at the following rates:

<b>Minor Subdivisions</b>	
Preliminary Plat (First Minor)	\$1500 + \$150 per Lot/unit
Subsequent Minor Subdivisions	\$2100 + \$150 per Lot/unit
Final Plat	\$300
Request for Exemption from an Environmental Assessment	\$200

<b>Major Subdivisions</b>	
Preliminary Plat	\$4000 + \$150 per Lot/unit
Final Plat	\$900

<b>Other Divisions of Land</b>	
Mobile Homes or RV Parks	Same as Minor (if 5 Lots /spaces/units or less) or Major
Mobile Homes or RV Parks Final Review Fee	\$300 for under 5 units, \$900 for over 5 units
Condominiums	Same as Minor (if 5 Lots/units or less) or Major
Condominium Final Review Fee	\$300 for under 5 units, \$900 for over 5 units
Planned Unit Developments (PUD)	Same as Minor (if 5 Lots/units or less) or Major
Planned Unit Development Final Review Fee	\$300 for under 5 units, \$900 for over 5 units

<b>Amended Plat</b>	\$1,300
<b>Amended Plat with Public Hearing</b>	\$1,500
<b>Subdivision Regulations, paper</b>	\$20 plus postage
<b>Subdivision Regulations, CD</b>	\$5 plus postage
<b>Fire Department or Service Review Fee</b>	\$100 per Lot/unit

<b>Weed Review Fee</b>	\$75 plus \$75 per Lot/unit
<b>Sanitarian Review for Sanitation and Water Availability</b>	\$675 per Subdivision
<b>Road Supervisor Review Fee</b>	\$250 per Subdivision

**XI-B. Variances**

**XI-B-1. Variances Authorized**

The Board of Commissioners, after a public hearing on the variance request, may grant variances from chapter VI, [Design and Improvement Standards], of these regulations when, due to the characteristics of land proposed for Subdivision, strict compliance with these standards would result in undue hardship and would not be essential to the public welfare. A variance will not be granted if it would have the effect of nullifying the intent and purpose of these regulations.

The Board of Commissioners shall not approve a variance unless it finds that:

- A. The granting of the variance will not be detrimental to the Public Health, Safety, or general welfare or injurious to other adjoining properties;
- B. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self imposed;
- C. The variance will not cause a substantial increase in public costs; and
- D. The variance will not place the Subdivision in nonconformance with any adopted zoning regulations.

**XI-B-2. Variances from Floodway Provisions Not Authorized**

The Board of Commissioners shall not approve a variance permitting a Subdivision for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, Chapter 5, MCA.

**XI-B-3. Procedure**

- A. The Applicant(s) shall include with the submission of the preliminary plat a detailed written statement describing and justifying the requested (primary) variance, along with documentation, including, but not limited to:
  - 1. Photographs of the requested variance area;
  - 2. Drawings;
  - 3. Topographical maps;

4. Letters/documentation from professionals; and
  5. The variance request shall include a requested alternative that complies with the provisions under section XI-B-1 and includes the same type of information and documentation as the primary variance (as described above). Failure to provide an adequate alternative will result in an insufficient variance request.
- B. After the requested variance has been deemed to contain sufficient information under section II-A-6.B the Planning Board shall consider the requested primary variance and alternative variance and make findings and forward a recommendation of approval, conditional approval, or denial to the Board of Commissioners.
- C. A minor Subdivision is not subject to the public hearing requirement of this section.

**XI-B-4. Conditions**

In granting variances, the Board of Commissioners may impose reasonable conditions to ensure the objectives of these regulations.

**XI-B-5. Statement of Facts**

When a variance is granted, the motion to approve the proposed Subdivision must contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based.

**XI-C. Amendment of Regulations**

Before the Board of Commissioners amends these regulations it shall hold a public hearing on the proposed amendment. Notice of the time and place of the public hearing must be published in a newspaper of general circulation in the county not less than 15 days or more than 30 days before the date of the hearing.

**XI-D. Administration**

**XI-D-1. Enforcement**

Except as provided in Section 76-3-303, MCA, and these regulations, every final Subdivision plat must be filed for record with the County Clerk and Recorder's Office before title to the subdivided land can be sold or transferred in any manner. If unlawful transfers are made, the county attorney's Office shall commence action to enjoin further sales or transfers and compel compliance with all provisions of MSPA and these regulations. The cost of this action shall be imposed against the non-prevailing party.

**XI-D-2. Violation and Penalties**

Any person, firm, corporation, or other entity that violates any of the provisions of MSPA or these regulations is guilty of a misdemeanor punishable by a fine of not less than \$100 nor more

than \$500 or by imprisonment in jail for not more than three months or by both fine and imprisonment. Each sale, lease, or transfer, or offer of sale, lease, or transfer of each separate parcel of land in violation of any provision of MSPA or these regulations shall be deemed a separate and distinct offense.

**XI-D-3. Appeals**

- A. A person who has filed with the Board of Commissioners an application for a Subdivision under MSPA and these regulations may bring an action in district court to sue the Board of Commissioners to recover actual damages caused by a final action, decision, or order of the Board of Commissioners or a regulation adopted pursuant to MSPA that is arbitrary or capricious.
- B. A party identified in paragraph (D) below who is aggrieved by a decision of the Board of Commissioners to approve, conditionally approve, or deny an application and preliminary plat for a proposed Subdivision or a final Subdivision plat may, within 30 days from the date of the written decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.
- C. For the purposes of this section, “aggrieved” means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.
- D. The following parties may appeal under the provisions of paragraph (B) above:
  - 1. The Applicant(s);
  - 2. A Landowner with a property boundary contiguous to the proposed Subdivision or a private Landowner with property within the county or municipality where the Subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;
  - 3. The county commissioners of the county where the Subdivision is proposed; and
  - 4. One of the following municipalities:
    - a. A first-class municipality as described in Section 7-1-4111, MCA, if a Subdivision is proposed within 3 miles of its limits; or
    - b. A second-class municipality, as described in Section 7-1-4111, MCA, if a Subdivision is proposed within 2 miles of its limits;
    - c. A third-class municipality, as described in Section 7-1-4111, MCA, if a Subdivision is proposed within 1 mile of its limits.

**XI-D-4. Mediation**

- A. Before filing an appeal in district court, any party allowed to appeal under XI-D-3, may request mediation. If mediation is requested before an appeal, the request for mediation stays the thirty (30) day time period in which to file an appeal. A written request for mediation must be mailed by certified mail to the Board of Commissioners within thirty (30) days of their dated decision and the mediation process must be completed within seventy-five (75) days of the date of the written request for mediation.

If a request for mediation is made, after the seventy-five (75) days for mediation has passed, the party then has thirty (30) days to file an appeal to district court.

- B. Mediators selected or appointed as provided in this section shall be entitled to judicial immunity.
- C. The parties may jointly select a mediator within fifteen (15) days of the written request for mediation. If the parties cannot jointly select a mediator, one will be assigned by the Sixth Judicial District Court.
- D. The mediator's fee and incidental expenses shall be shared equally by the parties. Each party shall bear its own attorney fees.
- E. The mediation process shall comply with Rule 54(e) and (f) of the Rules of Appellate Procedure, as follows:
1. The mediation required by this rule is an informal, confidential, non-adversarial process in which an impartial third person, the mediator, assists the parties to resolve the differences between them. The decision-making authority remains with the parties; the mediator has no authority to compel a resolution or to render a judgment on any issue. The role of the mediator is to encourage and assist the parties to reach their own mutually-acceptable settlement by facilitating communication; helping to clarify issues, interests, and the appellate perspective; fostering joint problem-solving; and exploring settlement alternatives.
  2. Upon selection or appointment to mediate, the mediator shall schedule a mediation conference between the parties for the purpose of attempting to resolve the issues.
  3. The conference shall be held in person; except if distance, time or other considerations make it impractical, then the mediator may hold the conference by telephone at such time and place as the mediator may determine. The mediation shall proceed in substantial compliance with the requirements of Rule 65 of the Rules of Appellate Procedure.
  4. The party requesting mediation shall submit the required statement of position to the mediator and opposing counsel within fifteen (15) days of the date the notice of selection or order of appointment of the mediator. The responsive party shall have seven (7) days to submit a responsive statement of position.



5. The parties' respective submissions shall not exceed ten (10) pages in length, double spaced, on standard letter-sized paper; provided, however, that the parties may attach such exhibits of record and transcript excerpts as the parties may wish the mediator to consider.
  6. The parties shall serve on the mediator and opposing counsel a written statement of position containing, at a minimum, the following:
    - a. A statement of issue(s) and the manner in which each issue was preserved;
    - b. A statement of the standard of review applicable to each issue;
    - c. The position of the party with respect to each issue, with citations to legal authority; and
    - d. A copy of the decision of the Board of Commissioners.
  7. In addition to the statements of position to be served on the mediator and opposing parties, each party may submit to the mediator a separate confidential submission containing such additional information relative to its position regarding settlement as it may wish to tender in order to facilitate the mediation process. Unless otherwise agreed, such submission shall not exceed five (5) pages. Such additional submission, if any, shall be served on the mediator contemporaneously with the service of the party's statement of position.
  8. Each party, or a representative of each party with authority to participate in settlement negotiations and affect a complete compromise of the case, shall be required to participate in the mediation conference. If an insurance carrier is involved, the representative with ultimate settlement authority for the insurance carrier shall participate in the mediation conference.
  9. Proceedings confidential. The mediation process shall be confidential. All proceedings held, submissions tendered and statements made by anyone in the course of the mediation process constitute offers to compromise and statements made in compromise negotiations pursuant to Rule 408 of the Montana Rules of Evidence and are inadmissible pursuant to the terms of that Rule.
- F. If a compromise is reached by the parties, such compromise shall be set forth in writing and signed by all parties to the mediation. The mediation agreement shall modify any previous decision of the Board of Commissioners and shall be filed with the appropriate offices. The mediator shall be responsible for obtaining all signatures.